

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 18
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JULY 11, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
18 OFFICIAL COURT REPORTER
19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648.
22
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24
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1 THE COURT: Good morning, everybody. Please be
2 seated.

3 Number one, I was advised over the weekend that we
4 are not going to have another witness today. In other words,
5 the taking of evidence is complete. So other than the short
6 colloquy we are going to have in a minute, we are going to go
7 straight to closing arguments. So that when we resume the
8 trial when the jury comes in, we will begin with defendant's
9 closing argument.

10 Number 2, over the weekend I received some further
11 reading materials from Mr. Fram concerning the jury charge.
12 And also, resumed our charge conference in the robing room
13 for about 20 minutes, just a few minutes ago.

14 I have made two changes, as a result of all of
15 that. One, was the addition of a paragraph that relates to
16 the question of Roland Wilder -- the union's reaction to
17 Roland Wilder's various litigation suggestions.

18 And I have also combined two paragraphs to sort of
19 summarize the legal charge, and I told the parties where
20 those changes were made. Now, the parties want to put on the
21 record their positions on some issues, and so I am going to
22 let -- well, first I will ask the plaintiffs. Anything you
23 want to put on the record that you are unhappy with?

24 MR. RODRIGUEZ: Yes, your Honor.

25 THE COURT: I don't want you to be unhappy -- I

1 want both sides to be unhappy. Then I know I have done my
2 job.

3 MS. RODRIGUEZ: I know we spoke in the robing room
4 about the addition of the language regarding the litigation
5 strategies. I am not sure, flipping through I am not sure
6 where it is in the jury instructions.

7 I am not able to refer to it exactly. But I will
8 say, your Honor, that the language cited to you by the
9 defendants from the Eleventh Circuit, anticipated the filing
10 of a grievance, and they just took the grievance language
11 out, and plugged in litigation. And I think the rationale
12 behind having --

13 THE COURT: By the way, page 18, the large
14 paragraph that starts, on, a little before the middle of the
15 page. You heard testimony, et cetera. Page 18.

16 MS. RODRIGUEZ: I think that --

17 THE COURT: Do you see that?

18 MS. RODRIGUEZ: I do see that, your Honor. Again,
19 I just roar the record note that the language of the Eleventh
20 Circuit, and the cases cited by the defendants talk about
21 grievances, not litigation, and that there is a difference in
22 the distinction between filing a grievance against a company
23 employee and the situation before the Court in this case
24 where there is litigation against not the employer of the
25 pilots, but American and APA and I think that that

1 distinction warrants a different treatment.

2 THE COURT: I agree with your comment, but I
3 thought it captured as well as could be done the concept of
4 how a union reacts to a request to litigate a particular
5 position. And I thought it was balanced and I thought that
6 the first part, while called the defendant's position, set
7 forth, the second part of that charge I think is like a
8 plaintiff's position and it emphasizes here that to some
9 degree it is whether the union acted in good faith or bad
10 faith in making the decision.

11 I mean it is a very sticky area, I admit, when the
12 union or the plaintiff's position, the union refused on three
13 occasions to litigate. I didn't want to turn the case into a
14 law school exercise as to what were the merits of the
15 proposed litigation. I thought the issue was much more
16 subtle than that. I thought this captured it. But captured
17 it fairly.

18 Your objection is noted on the record.

19 MS. RODRIGUEZ: Thank you, your Honor.

20 THE COURT: Mr. Fram.

21 MR. FRAM: Thank you, your Honor.

22 We requested a charge defining bad faith that is
23 included in Section 157.102 of O'Malley and of course that is
24 actually a paired-down version of the earlier charge
25 requested based upon Deboles which we think requires the

1 elements of fraud --

2 THE COURT: Yeah, but we don't think, in fact, as I
3 said I would, would read all those cases, not just Deboles,
4 but a lot of other cases. We are not convinced that the type
5 of charge there is called for by Deboles or any other case.

6 MR. FRAM: I understand. I am concerned about the
7 first full paragraph on the top of 18 where the charge
8 defines bad faith, including things like deliberating making
9 misleading statements to employees, not disclosing conflict
10 of interest, acting with hostility toward union members and
11 ignoring union policies and labor negotiations.

12 I think that is actually inconsistent with the law
13 summarized in O'Malley. O'Malley defines bad faith in the
14 way I described: Fraud, deceitful action, dishonest action,
15 and then says personal hostility alone is not enough and in
16 contrast to that the paragraph I referred to on 18 suggests
17 that hostility is enough.

18 So I think that is contrary to the law, and I think
19 your Honor should instruct the jury consistent with what is
20 earlier in the instruction that personal hostility is not
21 enough.

22 THE COURT: It is not enough, but that doesn't mean
23 that it is not evidence of bad faith. And you pointed that
24 out. I am satisfied that we have it right.

25 MR. FRAM: That is one objection. Your Honor, I am

1 concerned a little bit about causation in two respects. One,
2 we think the jury needs to understand that causation has to
3 be proven by the plaintiffs, you say that in the charge.

4 THE COURT: I say it in the charge, now I will be
5 saying it twice, with that paragraph.

6 MR. FRAM: But we also request, consistent with the
7 charge we submitted yesterday, that they be instructed that
8 they should not speculate about whether things might have
9 been different. We also request, given the instruction on
10 the verdict sheet that a separate section be included here
11 that focuses just on the issue of causation.

12 THE COURT: I am satisfied that the charge covers
13 that point. I mean more than happy.

14 MR. FRAM: We stand on the objections we made last
15 week as well.

16 THE COURT: Of course. Okay.

17 MR. FRAM: Thank you.

18 THE COURT: I am going to mark what is now draft
19 number 4 of the charge, and draft number 3 of the jury
20 verdict, as C 3 and C 4. And before we close I will mark the
21 exhibit, the final char charge.

22 MS. RODRIGUEZ: The jury instructions are C 3 and
23 the charge is C 4.

24 THE COURT: The other way around -- no, you are
25 right. C 3 will be the charge, and C 4 will be the verdict

1 sheet. One is draft three and one is draft four. Okay. All
2 right. I know you have a little preparation.

3 MR. FRAM: I need to modify my Power Point and set
4 up. I am not sure where the best point to put the screen for
5 the power point is. Is that okay. Against that wall,
6 side-by-side.

7 THE COURT: Well, those are the folks that have to
8 see what you want to do. You have to make that decision.
9 You can't use the screen and our, the screen we normally show
10 evidence, you can't use those.

11 MR. FRAM: We will have evidence and documents
12 going up on the screen side-by-side with the Power Point.

13 THE COURT: So it will appear on the big screen.

14 MR. FRAM: The power point will be on the small
15 screen. At the same time we will be showing evidence --

16 THE COURT: If you are satisfied the jury can see
17 it. It is your closing.

18 MR. FRAM: I think we will move it up. If we can
19 have a minute to modify the Power Point. I will appreciate
20 it.

21 THE COURT: We told the jury that that there would
22 be no more evidence and we are going right to closings, and I
23 will tell them without identifying who, we are saying the
24 parties are getting ready for the closing.

25 MR. PRESS: There was much rejoicing when they

1 heard no more evidence.

2 THE COURT: I wasn't there. I can't testify as to
3 what their facial expressions were.

4 Okay.

5 MR. FRAM: Thank you, your Honor.

6 THE COURT: I will get off the bench and wait until
7 I am told you are ready.

8 (Recess)

9 (Jury enters the courtroom.)

10 THE COURT: Good morning, everybody. Ladies and
11 gentlemen, the parties have advised me that the taking of
12 evidence is complete. You have now heard all the evidence
13 and we are proceeding to the part of the trial known as
14 closing arguments, or closing statements.

15 It is the chance for each of the lawyers to argue
16 to you, that is in a good sense of the word argue, argue to
17 you why the evidence supports his or her particular view of
18 the case.

19 However, I do want to instruct you that if a lawyer
20 recounts evidence to you that is not evidence itself, a
21 lawyer's statement as to what somebody said or what the
22 evidence was, is not in and of itself evidence. If a
23 lawyer's statements of fact differs from your recollection of
24 what went down in the witness box, it is your recollection
25 that controls, not what the lawyer said. However, it is a

1 very important part of the case because it is the only time
2 the lawyer gets to really draw all the threads together into
3 a cohesive whole. I urge you to pay strict attention to
4 what the lawyers have to say, and with that I recognize Mr.
5 Fram to give the closing argument for the defendant.

6 MR. FRAM: Thank you, your Honor. Good morning.

7 You have all listened patiently for quite a few
8 weeks now since June 6 to what the witnesses have to say.
9 You have heard about documents and seen some of them, and you
10 are probably wondering at this point, well, there is a lot of
11 information out there. What are we supposed to do in terms
12 of evaluating that?

13 You have heard about litigation theories, for
14 example. Was ALPA required, if a couple union members
15 thought it made sense to go file a lawsuit, was ALPA somehow
16 required to do that. And you don't have a framework yet and
17 you really haven't had a framework for evaluating the
18 information you have been given.

19 What is going to happen at the end of the closing
20 argument, I will speak and then one of the lawyers on behalf
21 of the plaintiffs will speak, then Judge Irenas is going to
22 read you the law. He is going to give you what is known as
23 the jury charge.

24 In that jury charge he is going to tell you what
25 the standards are. He is going to give you a framework to

1 evaluate the conduct of ALPA, and you will measure the
2 evidence, the testimony, the exhibits, against that framework
3 and decide whether or not there is merit to the claims that
4 were made here.

5 So that you understand my argument, understand the
6 reasons why I am going to try to persuade you that the
7 plaintiffs had not met that standard, that there has been no
8 breach. I want to start by taking a couple of minutes to
9 give you a preview of what the Judge is going to tell you and
10 of course, the precise words that he uses, the actual
11 language of the charge is what you should follow. I am
12 going to give you my best understanding of what it is, so
13 that you can follow along my argument and evaluate the
14 evidence.

15 Judge Irenas will tell you that there are two
16 things the plaintiffs need to prove. The first is that there
17 has been a breach of the duty of fair representation. What
18 does that mean? It means that the plaintiffs have to show
19 either that ALPA's conduct was arbitrary, or that ALPA acted
20 in bad faith. What does arbitrary mean? It means more than
21 negligent, it means conduct that is not reasonable, that is
22 irrational, that makes no sense. Pretty high standard.

23 What is bad faith? Bad faith goes a step even
24 beyond that. Bad faith is hostility or ill will. An example
25 would be deliberately making misleading statements to the

1 union members.

2 You have heard a lot during the case about
3 litigation proposals that were made. You recall there was a
4 fellow, Roland Wilder, who is merger counsel, kept coming up
5 with ideas for lawsuits he wanted to file. The standard is
6 the same in terms of evaluating those litigation ideas.

7 The standard is one of reasonableness. And the
8 Judge will tell you that that individual members cannot
9 insist that lawsuits had to be filed. I will talk more about
10 the way the MEC works, but simply because a couple members of
11 the MEC or some union members thought that a lawsuit was a
12 good idea, and ALPA didn't pursue it, that is not a breach of
13 the duty of fair representation.

14 So that is the first thing the plaintiffs have to
15 prove is that there has been a breach. Again, either
16 arbitrary conduct or bad faith.

17 They then have to prove that that breach had an
18 impact, that it made a difference. They have to show that
19 the breach caused harm. Tangible injury is one of the
20 phrases that the Judge will use, and what they have to prove
21 is that the overall outcome of the integration of the TWA
22 pilots into American would have been more favorable, not
23 different.

24 You have heard, I think, a lot of evidence about
25 what might have happened if certain things were done. If one

1 of Wilder's lawsuits were filed in the beginning, for
2 example.

3 There was a concern that the whole deal would blow
4 up. It is not enough to prove that if that lawsuit had been
5 filed they would have different, that they would have been
6 worse. They have to prove to you that the overall
7 integration would have are better, more favorable. I want
8 you to keep those standards in mind, those two requirements,
9 either arbitrary or bad faith in an impact, that it made a
10 difference, as you listen to the arguments to consider the
11 evidence in the case.

12 And a point I want you to keep in mind as well is
13 that when you Judge the conduct of ALPA and listen to the
14 plaintiff's arguments, you don't do so from this vantage
15 point. You don't do so with the benefit of hindsight, or
16 gee, we found out something later that if we had known about
17 in April of 2001 we might have decided differently. No
18 Monday morning quarterbacking. No second-guessing. You need
19 to put yourself in the mind frame of the people who are
20 making decisions at the time, and decide did they do things
21 that were unreasonable, given what they knew and given what
22 the circumstances were.

23 I want to break up the factual information you have
24 heard in the case roughly into three sets of issues. You
25 heard a lot. You heard about things that led up April 2, you

1 heard about complaints over the summer. You heard about
2 things that happen in the fall of 2001. And just for the
3 purposes of talking about the issues, I want to talk about
4 the events leading up April 2 of 2001, when the decision is
5 made to accept the collective bargaining agreement with TWA
6 LLC, and talking about the facts and the evidence there. I
7 then want to talk a little bit about what happened over the
8 summer in terms of the negotiations back and forth. And then
9 I want to talk finally about the events after 9-11, and the
10 events leading up to the imposition of Supplement CC, all the
11 back and forth there.

12 And I am doing that in part because when you think
13 about the evidence in each of those periods, Mr. Wilder
14 stepped up and said I think we should file a lawsuit. And I
15 think you are going to hear from the plaintiffs' side that
16 they are going to argue that each of those points, that the
17 lawsuit should have been pursued.

18 The decision on April 2, I think the claim you are
19 going to hear from the plaintiffs is that the members of the
20 MEC who voted on April 2 to accept a new collective
21 bargaining agreement, to waive their labor protected rights,
22 to move forward, they were somehow coerced, they were
23 bamboozled, they were either misled or bullied by ALPA into
24 taking action. We will address that.

25 The events over the summer of 2001, I think the

1 claim there is that ALPA didn't properly support them. It
2 didn't provide resources. And I will talk about that. I
3 won't spend as much time on that.

4 And finally the decision that is made, or really
5 the nondecision, that is made in the October and November
6 timeframe, by the MEC. I think the claim there is that ALPA
7 did not provide sufficient support. It didn't push for the
8 Bond Amendment, it didn't threaten to do things that some
9 people wanted. But again, the common theme in all of these
10 is we need to be more aggressive, we should go and file a
11 lawsuit.

12 The theory I think the plaintiffs have as to why
13 ALPA allegedly didn't do the things it was supposed to do is
14 a conspiracy theory. And their theory I think is that ALPA
15 announced as an organization in October of 2000 its so-called
16 unity campaign. And we have unity resolution, it is in
17 evidence. It is adopted by ALPA with the concurrence of all
18 the different MEC's, everybody knows about it. And as you
19 have heard, the resolution says that we want ALPA to
20 represent as many airline pilots in the United States, and
21 Canada, as it can. We think that benefits everybody. All
22 the pilots, to have a bigger group. It benefits everybody in
23 terms of ALPA's ability to negotiate better contracts with
24 individual airlines, it benefits everybody in terms of having
25 that kind of base line.

1 And there were specific pilot groups, as you heard,
2 that ALPA was focused on in late 2000, the one at the top of
3 the list, as you heard from Captain Woerth, and also Seth
4 Rosen who was the Continental pilots. There have been
5 discussions ongoing already, and ALPA did in fact proceed
6 with its organizing campaign, the campaign to merge with the
7 union, the independent union representing Continental,
8 Federal Express was another independent union that
9 represented those pilots and was there as well.

10 But certainly the American pilots represented by
11 the Allied Pilots Association, they were one of the groups
12 that ALPA was interested in, and Captain Woerth went and
13 talked, as you have heard, to the leadership of the APA, in
14 October of 2000 and said, hey, we would like to have you guys
15 come back. We know you split off back in the early sixties.
16 We think it makes sense. We think it makes sense for us. We
17 think it makes sense for you to come back.

18 No question about that. No question everybody knew
19 about that. And of course one of the things that the
20 American pilots union is dealing with at that point is this
21 \$45 million fine you heard about. They had the sick-out in
22 February of 1999, American had to cancel hundreds of flights,
23 lost all kinds of money. They went to court and a federal
24 judge down in Texas imposed this fine. That was unresolved,
25 as of late 2000. It was a concern to some degree to the

1 American pilots. That became an issue of discussion.

2 So the conspiracy theory, as we understand it, is
3 that because ALPA was interested in attracting the American
4 pilots, bringing them back in to ALPA, during 2001, when ALPA
5 was assisting the TWA pilots, it tried to undercut them. It
6 tried to undercut them in a way so that they got less
7 favorable seniority integration and the American pilots did
8 better.

9 And I think you heard throughout trial this some of
10 the plaintiffs' witnesses complain about the fact that ALPA
11 didn't do certain things. Obviously there were other
12 witnesses and I will come to that, who we call and said, no,
13 that is not the case and of course you will recall Steve
14 Rautenberg who was there from day one, had a very different
15 perspective than some of the plaintiffs' witnesses, you
16 heard David Singer, the fellow who got pushed out of Council
17 2 because he did not agree with Ted Case, and Howard
18 Hollander.

19 But that is the theme. That is the theory that, A,
20 ALPA did things that it shouldn't have done, or failed to do
21 things it should have done; and B, it did that because it was
22 really more interested in the American pilots. And what I
23 think the evidence proves and what I am going to argue to you
24 is that ALPA did everything it should have done. It acted
25 reasonably and certainly not unreasonably or irrationally,

1 and that this long term interest of bringing the American
2 pilots back had nothing to do with anything.

3 So let me walk ahead and give you some very
4 important background, you probably heard it but I want to
5 summarize a couple points about how ALPA works so that you
6 understand how far-fetched this theory is and why it makes no
7 cents.

8 The first thing I ask you to recall is that the way
9 ALPA is structured is that the pilots at an individual
10 airline, such as TWA, they make all the major decisions.
11 What happens is you have the three councils which you have
12 heard about, Council 2 in New York, Council 3 in St. Louis
13 and Council 4 in California, Los Angeles, they represent
14 elect representatives.

15 At least early in 2001, up until November 1, you
16 have six representatives, one captain rep and one first
17 officer rep from each of the so-called domiciles. Those
18 elected representatives get together and they elect officers
19 to help them organize things and run things, and they make
20 the decisions. This is a Democratic system where the pilots,
21 through elections, in effect, are having their
22 representatives make decisions, including the decisions about
23 what gets put out to the membership for ratification, so that
24 the six people who are voting on a particular issue think,
25 gee, we want to make sure the members are really comfortable

1 what with what they are doing, they have the option of
2 sending that issue out and in effect getting a referendum on
3 it, not taking responsibility for making the decision and
4 saying we are going to leave it up to you.

5 Are there limits on what an MEC can do? Yes. They
6 are supposed to operate and conduct themselves in accordance
7 with the Constitution and the bylaws, and the policies of
8 ALPA. Otherwise, there would be no point in having them be
9 part of the bigger organization.

10 And ALPA gets to approve litigation. ALPA does not
11 permit individual unions to go off and file lawsuits. And
12 indeed, it couldn't, because the unions are part of ALPA. If
13 a law lawsuit is going to get filed on behalf of the
14 authorized collective bargaining representative of the
15 employee, it has got to be ALPA that files the lawsuit.

16 As you can imagine over the years and given the
17 number of unions that number of airline groups, rather,
18 pilots that ALPA represents, you would want to have some
19 degree of consistency, some institutional knowledge about
20 what kinds of lawsuits work or don't work, and that is why
21 ALPA reserves the right to make that decision.

22 And then within ALPA you have these MEC's, they
23 together form the ALPA board of directors, the MEC chairman,
24 the master chairman form an executive board, and then
25 officers and executive vice presidents from the MECs form an

1 executive council. So you have all this coordination within
2 ALPA, and all of this discussion and interaction back and
3 forth with the MEC members, not only of TWA, but all of the
4 other airlines whose pilots are represented by ALPA.

5 And one of the things I want you to keep in mind as
6 we talk through the issues in the case, and you hear about
7 some of the complaints you heard from the plaintiffs, like
8 the litigation complaint. We didn't go off, ALPA didn't
9 authorize to go off and file a lawsuit to enjoin or conduct a
10 transaction.

11 Again, the TWA pilots act through the MEC. How
12 does the MEC act? They have votes, they make decisions. If
13 a resolution does not come out or a directive does not come
14 out of the MEC there is nothing for ALPA to do or not do.
15 Again, that is the process. The process is referred to, you
16 may have heard as Independence Plus. The pilots are
17 independently entitled to make their own decisions. The plus
18 is ALPA has these resources, and this guidance and the
19 institutional knowledge and the like to back them up.

20 All right. So let's focus on this first set of
21 issues that I mentioned to you before, the one leading up
22 April 2, and I will give you a little background just so we
23 have it all in mind, and you have heard this for weeks and
24 weeks.

25 I am sorry if I am repeating stuff you know well.

1 I will try to move through this quickly. January of 2001 is
2 TWA's third bankruptcy filing. It had filed back in 1992 and
3 again in 1995. There had been concessions, millions and
4 millions of dollars of concessions by the pilots, lots of
5 concessions from the flight attendants and the other workers
6 as well.

7 The good news about the American deal is that
8 American is promising jobs to all of the TWA employees, all
9 20,000 of them, obviously including the pilots. American is
10 at that point the largest airline in the country. It is
11 financially secure. It is stable. It has a bright future.
12 The hitch, of course, as you heard, is that the asset
13 purchase agreement between American and TWA requires that the
14 TWA pilots waive their labor protective provisions, the one
15 that is most important, as you have heard, is the right to go
16 to arbitration if the pilot groups do not agree on
17 seniority. I will come back to that.

18 Why does American require that as a condition of
19 the deal? Because American has a labor agreement, a
20 collective bargaining agreement with its own union, the APA,
21 that entitles the APA to have any new pilots who come in be
22 stapled, meaning being put at the bottom of the seniority
23 list. American has no leverage over the APA to speak of. I
24 will come back and talk about how incidental that becomes but
25 the fact of the matter is American is legally required to

1 respect the contract that it signed with the APA and with its
2 own pilots, and there is no reason in the world why American
3 is going to disrupt that or try to attack that or try to
4 change that.

5 You have heard a lot in the case from some of the
6 TWA pilots. I think really all of them to be fair about how
7 important seniority is in the pilot industry. We don't
8 disagree with that. But think about the American pilots.
9 Seniority is just as important to the American pilots as it
10 is to the TWA pilots.

11 So when the deal gets announced their position very
12 much is, hey, we have a contract that entitles us to
13 seniority over the TWA pilots, and it is important. We are
14 not going to give that up unless something significant
15 happens.

16 ALPA, of course, has no leverage over American or
17 the APA. It doesn't have contracts with them. It really
18 doesn't have leverage. And we will talk, despite the absence
19 of that leverage, about things that ALPA tried to do to
20 persuade the American pilots, and to persuade American to
21 treat the TWA pilots with some compassion.

22 But American makes clear, as you have heard during
23 the entire process, and certainly after April 2, that it is
24 not fooling around here, when it says that the TWA pilots
25 have to waive scope, it is serious. And you have heard the

1 testimony about its threats to walk away from the deal if
2 that aspect, that condition is not met.

3 And of course, the Section 1113 motion which you
4 have heard about again and again and again is the device, the
5 vehicle that American acting really behind the scenes, or not
6 even really behind the scenes, with TWA, that is the vehicle
7 that they use to bring this issue ahead. Because as you have
8 heard, in early 2001, TWA is in terrible condition. The
9 bankruptcy is public. People aren't buying as many tickets.
10 American is putting in this so-called DIP, debtor in
11 possession financing, and this is costing American a lot of
12 money. They want to move this deal along and not have it be
13 out there, and the way they do that is by filing a motion
14 under Section 1113.

15 Pardon me one second.

16 All right. So what does the MEC supported by ALPA
17 do to get ready for what everything else is coming?
18 Everybody knows this decision is coming in terms of do we
19 waive scope, do we not?

20 And again, you heard about the different committees
21 that the MEC had, the committees of course, they are all
22 persons, I don't want to say man, because you have some women
23 involved, but they are all persons, pilots.

24 You have the negotiation committee out there,
25 chaired by Ron Kiel. You have a merger committee that is

1 appointed. You have Bud Bense, he does it for a while,
2 early March, he steps down, and then Mike Day comes in as
3 chair of that committee. He has a group of pilots. You
4 heard Mr. Day testify. You heard about a merger oversight
5 committee. You heard about a bankruptcy committee. So there
6 are many, many pilots beyond the ones who are elected and
7 beyond the ones who are directly part of the MEC who are part
8 of the process.

9 During this period, the MEC and the different
10 committees also engaged in different advisors. I will talk
11 about that in a little bit, and you also heard that a public
12 relations firm is engaged. That firm is engaged to get out
13 to the public, and to get out to Congress the position of the
14 TWA pilots, with respect to the deal. And the position of
15 the pilots, unambiguously, without any question, is we
16 support the deal. We want the American deal to go ahead. We
17 want Carl Icahn to disappear. We don't want TWA to liquidate
18 and lose our jobs, and that is a sensible position.

19 It is really the only position that you could take
20 that makes sense under the circumstances. What are some of
21 the key events you heard about during the period leading up
22 April 2? Well, you have got to figure out do you want to
23 accept this collective bargaining agreement, you have got to
24 determine to waive seniority. This is the decision, I
25 project I had for you what the decision ultimately is. I am

1 going to walk back a little bit and talk to you about some of
2 the events leading up to it.

3 But if you recall, all the different back and forth
4 that went into this, if you recall the resolution that is
5 adopted on April 2, it is not a resolution as a couple of
6 plaintiffs' witnesses said to waive scope, it is a resolution
7 to accept the new collective bargaining agreement, subject to
8 some tweaks and loose ends, to waive scope and resolve the
9 1113 motion and move ahead.

10 Obviously, the resolution of that motion means
11 that you avoid a lot of downside that you heard about. And
12 you certainly avoid the risk of American walking away from
13 the deal. I will talk about that in a little more detail.

14 What is the new collective bargaining with TWA
15 LLC? Well, it secures jobs with the largest, most
16 financially secure airline in the industry. You got higher
17 hourly rates. You heard some of those numbers. The 767
18 captains from American are making \$66 per hour more than the
19 TWA captains. So that is obviously a positive.

20 I think you also heard that the hour limitations
21 are a little bit different in American, but the fact of the
22 matter is very significant benefit. You heard about the
23 contributions to \$12 million plus interest in contributions
24 that are made as part of this deal by TWA LLC to the fund,
25 that is a big benefit. And you heard as well about the

1 flight pay loss that ALPA picks up. I want to just dwell on
2 that for a second, because I think it says a lot about the
3 case that the plaintiffs have presented.

4 If you recall under the collective bargaining
5 agreement with TWA, Inc., the company goes into bankruptcy,
6 there is this bank that set-aside for flight pay loss. And
7 that is money that is available for people involved in union
8 activities. Members of the TWA MEC, they go to meetings,
9 they are involved in grievances, if they miss a flight and
10 can't make money as a result of that, well, the bank is out
11 there and TWA pays.

12 Well, what happens when this deal is negotiated is
13 that that disappears, and you may have heard some testimony,
14 you may recall testimony about the joint petition, remember
15 the fee petition that is put into bankruptcy? I think with
16 Mr. Jacobson, who was talking to Mr. Holtzman, well, Mr.
17 Holtzman, isn't it a fact that one of the things that the TWA
18 pilots gave up when this agreement was struck is they gave up
19 their right to flight pay loss payment?

20 Well, Yeah, they did. They give it up in terms of
21 TWA, Inc., a company in bankruptcy and about to disappear, so
22 they didn't really give anything up P. Who stepped in and
23 paid the flight pay loss? ALPA did. And you heard the
24 testimony about the millions of dollars that ALPA paid
25 through 2001 and 2002 to the pilots who were doing the union

1 work.

2 You heard about the \$180,000, for example, in
3 flight pay loss that was paid to Robert Pastore, who was the
4 master chairman of the MEC. What happens here, I want to
5 highlight this for you with respect to the collective
6 bargaining agreement, is that ALPA steps in. ALPA could
7 have said listen, we don't want to be responsible for flight
8 pay loss. Let's have TWA LLC pay \$2 million less for the
9 outstanding pension contributions. We will set that aside.

10 Did it do that? No. It made a direct
11 contribution, a direct benefit to the union members by
12 stepping up and saying we will take care of the flight pay
13 loss. We will support you going forward in your union
14 activities and your efforts to protect the rights of the TWA
15 pilots.

16 Now, let's focus for a minute on what the TWA
17 pilots gave up when they agreed to this new collective
18 bargaining agreement on April 2, because this becomes a big
19 issue going forward. We are going to focus on that, you are
20 going to hear a lot about. They gave up the right to
21 seniority arbitration, and of course I think you heard that
22 there was essentially no choice. The section 1113 motion was
23 there. They were advised by the advisors that it would
24 likely be granted. I will show you in a couple of minutes
25 the statements that the plaintiffs themselves made, where

1 they acknowledged that, yeah, this particular bankruptcy
2 judge was going to run this through. The motion was going to
3 be granted. We really didn't have much of a choice. Of
4 course, you will recall Mr. Warner's testimony, he is the
5 lawyer from ALPA who did this analysis. Recall his notes, he
6 has agreement, no agreement, pros, cons, he walks through
7 and analyzes the pilots and they come to appreciate and
8 understand it is really a no-win situation. I think the
9 phrase Mr. Warner used was lose/lose. You don't have much of
10 a choice? But to give it up and to take the jobs and be
11 happy that you now have positions with the largest, most
12 financially secure airline in the country.

13 But I just want you to keep in mind as we talk
14 about the later negotiations, seniority negotiations, is that
15 the plaintiffs' mantra, what they keep saying is we gave up
16 scope, we gave up the right to seniority arbitration. What
17 does that mean? What does it mean to give up the right to go
18 to arbitration?

19 It doesn't mean giving up a particular position on
20 the seniority list. It doesn't mean you would get date of
21 hire. You heard what date of hire is. Date of hire means
22 you look at the dates when the two groups were hired at the
23 respective airlines and you put them together. That would be
24 the most equal way. It doesn't mean ratioing, where if you
25 have 11,000 pilots here and 2,300 here. It doesn't mean you

1 take five pilots from American and one pilot from TWA. It
2 doesn't mean anything.

3 It means I have the right to go to an independent
4 third party, and you have no idea who that person is. And
5 make your case. Make your argument for why you think you are
6 entitled to something in particular. So the right that is
7 given up is something that is very indefinite and very
8 unclear. That is all the TWA pilots ever claimed that they
9 were entitled to, the right to go to arbitration, with no
10 idea of how an arbitrator might view this, with no idea
11 whether an arbitrator would look at this and look at the
12 arguments made by American pilots and say yeah, you guys were
13 right.

14 So when you think, as you will be asked to, about
15 this issue of causation, remember I said to you before, that
16 the plaintiffs have to prove that there was a breach of the
17 duty, and they have to prove it mattered, they have to prove
18 that the outcome would have been more favorable. I don't
19 know how they could possibly do it because if you got what
20 you claim you didn't get, if you had gotten the seniority
21 arbitration, who knows what the arbitrator's perspective
22 would have been? And I will come back to that point in just
23 a little bit. But keep that in mind.

24 Now, you are probably wondering, well, Mr. Fram, if
25 this is all so clear, if the decision on April 2 was so

1 clear, really there is no choice, the 1113 was going to be
2 granted, this was the right thing, the pilots on the MEC did
3 the responsible thing, they protected jobs, they avoided
4 risk, they didn't assume, as I think you heard one of the
5 plaintiffs' witnesses testify, they didn't think Don Carty
6 was bluffing. Think about that.

7 Here is a guy who is the CEO of one of the largest
8 companies in the country, and he publicly states at different
9 points that if certain things don't happen, if scope is not
10 waived, that the deal is off, we are not going to go through.
11 And you have individual pilots saying, oh, the guy is
12 bluffing. I don't believe him.

13 Here is a guy who took on his own union and got a
14 \$45 million fine, and you are prepared to call his bluff?
15 You are a smaller pilot group. He owes no obligation to you
16 whatsoever and you are going to call his bluff.

17 Anyway, what is the plaintiff's version? What do
18 they say about why ALPA either acted arbitrarily, it acted
19 irrationally or that it acted in bad faith with respect to
20 this decision we have been talking about on April 2 of 2001.

21 Well, here is the story. We are going back a weeks
22 and weeks now. You may not recall this that clearly because
23 you have heard other testimony but I want to remind you of
24 what Ted Case and Alan Altman and Sally Young and Howard
25 Hollander told you when they testified about what happened

1 and why they felt that they were mistreated. The story they
2 told that was a consistent story, and I will show you that in
3 a couple minutes, is that April 2 was the first time that we
4 were told that we had to waive scope.

5 They claim that Roland Wilder was there at the
6 meeting on April 2, and that he was shouted down. He tried
7 to speak up and articulate his litigation theory, but the
8 other advisors shouted him down, principally Michael Glanzer.
9 They claimed that they had received advice about the Section
10 1113 motion prior April 2, to the effect you don't need to
11 worry about it.

12 Remember Hollander testified, Oh, I had a
13 conversation with Clay Warner, a 45-minute conversation, at
14 some point in late March, where he told me don't worry about
15 the 1113 motion, it is likely to be denied. I will come back
16 to Mr. Hollander in a couple of minutes.

17 And what they say as a result of all of this is
18 that we were pressured and coerced. Voices were raised. The
19 phrase they use is the train is leaving the station.

20 And what I want to do is I want to show you some of
21 the testimony, obviously it wasn't videotaped, but we have
22 transcripts. I think you understand that Ms. Johnson has
23 been sitting here through this whole trial typing away and
24 the result of her efforts, is that we get a transcript every
25 day what the testimony was, and I want to show you some

1 excerpts from those transcripts, we are going to put them up
2 on the big screen, and what I would like to do is start with
3 Altman, Young.

4 All right. So this is Alan Altman talking on April
5 2. I don't know if people can see that. The other screen is
6 not going to light up. We will work with this one. What he
7 says is, on April 2, instead of what we had been told, don't
8 waive scope, there is no reason to. We were told you have to
9 waive scope, you have to do it now. If you don't waive
10 scope, and it was, there were emotions involved.

11 Comments were made that the train had left the
12 station. Kind of apropos, we are dealing with Railway Labor
13 Act issues. What he is trying to suggest is not an allusion
14 to the Railway Labor Act. He is trying to suggest we were
15 railroaded. The train has left the session. We heard that a
16 number of times. There was a sense of urgency. There had
17 been no urgency, it had been fairly relax the you don't have
18 to do it. It is not going to succeed.

19 Let's go to the bottom. He says, well, did all
20 advisors on April 2 ultimately agree that the Section 1113
21 motion was likely to be granted?

22 That is what they told us. I don't know why they
23 changed their mind. Roland Wilder did not agree.

24 We will come back to Roland Wilder. It says, he is
25 referred there, remember that April 3, there are a couple

1 communications that went out on April 3, explaining what
2 happened. He says, it says, not one of our advisors believed
3 that we would be successful against 1113. The Court has
4 sided with TWA and American on virtually every important
5 issue.

6 Does that refresh your memory that all the
7 advisors, including Mr. Wilder, agreed a the 1113 was likely
8 to be granted? No, Roland did not. Like I said, Roland
9 walked out of the room. He was upset and he just turned
10 around and I don't consider this agreeing. As he is walking
11 out the door, he says, I guess some contract is better than
12 no contract. I can tell you, I remember Roland being abused,
13 actually quite heavily, by the other advisors. It was not a
14 pleasant sight. He describes Roland as a defeated person as
15 he walks out of the room oh April 2. This is the meeting on
16 April 2. He says, voices were raised. Actually, we were all
17 being yelled at. This was not professional.

18 Very dramatic.

19 Let's talk for a minute about what Hollander said.
20 Mr. Hollander. Right.

21 Can you recall what the individual advisors said to
22 you, and if you can't recall, can you recall what any of them
23 said? Then he says, you know, it is an interesting
24 statement. I can tell you what was said that day as if it
25 were yesterday. He recalls it vividly. The little bit vague

1 as to who said what. Clay Warner was an active speaker.
2 Michael Glanzer did speak. Bob Christie did speak. Roland
3 Wilder attempted to speak. April 2, Roland Wilder attempted
4 to speak. Let me phrase it as this. I am from New York. To
5 me, it almost looked like a Broadway play. That is how I
6 look at it today. Everybody was singing the same song and
7 dancing to the same step, with one exception, which was
8 Roland Wilder. Singing the same song. I will come back to
9 that. He says, I highlighted this.

10 At least once or twice he tried to offer
11 suggestions he was interrupted in his speaking. He was not
12 like, I am not saying like allowed, but he was cut off. Mr.
13 Wilder, we will get to that. Mr. Wilder, we don't share your
14 opinion on that.

15 Then, in the final sentence, he says the quote of
16 the day that is engrained in my head is the train is leaving
17 the station.

18 We were railroaded. The train is leaving the
19 station.

20 All right. Let's turn and look for a minute at Ms.
21 Young, what does she have to say about this. Sally Young.
22 We are talking about at the meeting on April 2. You have
23 seen evidence about a litigation strategy that Mr. Wilder had
24 come up with to try to hold the deal hostage basically. Was
25 that discussed at the meeting on April 2? She says she never

1 saw it. She didn't even know about the litigation strategy.
2 The first time she saw it was part of the litigation.
3 Skipping down where it says, "Roland had made his
4 presentation."

5 This is her version of what happened on April 2,
6 2001. "Roland had made his presentation and had argued
7 somewhat differently than the rest of the advisors, and at
8 that point in time after his presentation he sat down and
9 Michael Glanzer, the investment banker, who had been advising
10 about potential mergers got very angry and in fact stood up
11 and went over to Roland and again was screaming, American is
12 not going to do the deal if you don't waive scope. They are
13 going to walk." This is Mr. Press questioning.

14 "Again, screaming?

15 "ANSWER: Screaming."

16 They are trying to paint a picture. Or trying to.
17 What does she say about how Mr. Wilder reacted? Again, we
18 are on April 2, 2001. He capitulated, he looked defeated.
19 His body language was, he ended his presentation by saying,
20 you know, a contract is better than no contract. A phrase
21 that we saw before.

22 So this is the story, it is dramatic. It was
23 orchestrated, advisors were all singing the same song, they
24 had all gotten together with the exception of our champion,
25 Mr. Wilder, to take a common position. They beat this guy

1 up. They shouted him down, they physically intimidated him.
2 You get the image of Mr. Glanzer walking up and standing over
3 him. This is the allegation the plaintiffs have made.

4 All right. Well, let's talk for a couple minutes
5 about what Mr. Wilder says about the meeting on April 2,
6 2001. You may recall this. Let's start with the first
7 Wilder video, please.

8 What we are talking about --

9 MR. PRESS: Your Honor, I don't know if it is
10 proper to replay testimony.

11 THE COURT: I am going to allow it.

12 MR. PRESS: All right.

13 MR. FRAM: What we are talking about is Mr. Wilder
14 had a bill like all lawyers, who bill by the hour, he kept
15 time records. You recall his day timer he wrote in the book,
16 where he was on what days. So we are showing him his bill,
17 the one that he sent to Mr. Pastore and that the MEC paid as,
18 to see what it says about what he was doing on April 1 and
19 April 2. You just heard or saw or remembered testimony from
20 the plaintiffs about Mr. Wilder being there on April 2 and
21 all this drama. What does Mr. Wilder say about what is
22 happening on April 2 of 2001.

23 (Videotape deposition of March 21, 2011, at 15:09
24 commences)

25 MR. FRAM: All right. Then, there is a second

1 clip.

2 (Clip March 21, 2011, commencing at 14:15
3 commences)

4 MR. FRAM: 100 percent certain he was in Louisville
5 on April 2, 2001, and obviously could not have been at the
6 meeting with the MEC. Well, how can Young and Hollander and
7 Case, who said the same thing, and Altman come in and say he
8 was there and he got beat up on April 2? It never happened.
9 They are making it up. And in terms of trying to dramatize
10 the decision on April 2.

11 I will show you something else. Let's move, jump
12 to clip three of the video, which is where in the same
13 deposition, Mr. Press was there, asked Mr. Wilder about some
14 prior testimony given about different events. Let's skip to
15 three, please.

16 (Videotape of Roland Wilder commences, videotape
17 of March 21, 2011 commencing at 14:21:40 played)

18 MR. FRAM: Whatever I said before happened on April
19 1, not on April 2. Let's show the final Wilder clip where he
20 talks about things that he thought happened on April 2.

21 Go ahead.

22 (Videotape of Roland Wilder dated August 8, 2008,
23 commencing at 2:55:25, commences).

24 MR. FRAM: I was asked that by Captain Young.
25 Sally Young. And he has now clarified this is April 1.

1 Well, what did the plaintiffs say about what happened on
2 April 1? Do you recall this?

3 They all told the same story. They said that they
4 didn't understand that the members of the MEC were invited
5 April 1. You may recall me showing them that email, the
6 March 29 email, where it refers to the scheduling the
7 meeting. Let's pull that up real quick. Brian, that is D
8 210. If you blow the top part, this is the announcement sent
9 to all the pilots who testified. It is announcing that the
10 master chairman is holding a special meeting on April 2.
11 There will be a work session beginning on Monday -- I am
12 sorry, work session beginning Sunday, April 1. There is no
13 indication that they are not invited and yet all of them,
14 Case, and Altman, and Young and Hollander, they all
15 testified on the stand in the courtroom that they were there
16 on April 1. They didn't think they were invited. They were
17 busy with other stuff. They didn't attend. They insinuated,
18 they suggested this was a meeting for the organizers to get
19 organized.

20 This goes back to the conspiracy theory. The
21 advisors are sitting down, trying to coordinate. Well, wait
22 a minute. You just heard Mr. Wilder testify everything he
23 thought happened on April 2, including the dialogue with
24 Sally Young, happened on the first. So Mr. Wilder is now
25 confident that he recalls here being there on April 1 and

1 that Sally Young came in and testified as did the other pilot
2 plaintiffs, they weren't even there.

3 Mr. Rautenberg and Mr. Singer were here and
4 testified. They were other pilots on the MEC. They said
5 everybody was there. We were there. Everybody was there.
6 Mr. Holtzman was there and testified about it. Mr. Warner
7 was there and testified about it. Mr. Seltzer was there, and
8 testified about it.

9 By the way, Mr. Rautenberg and Mr. Singer, you
10 think they are popular among the former TWA pilots for coming
11 in here and testifying and contradicting what Altman and
12 Young and Hollander and Case said. Did you notice how they
13 got glared at by some of the pilots when they left the stand?
14 I don't know if you noticed that or not. They are not
15 popular for not agreeing with the plaintiffs' position in
16 this case.

17 I want you to think when you judge credibility,
18 that is a big issues in the case, I want you to think about
19 what incentive does Steve Rautenberg have to come from St.
20 Louis and get on the stand and talk about these issues. Is
21 he going because he is going to benefit in some fashion? No,
22 he is doing it because it is the truth. Same with David
23 Singer.

24 So the story that the plaintiffs are trying to tell
25 you about being bullied, and coerced on April 2, never

1 happened. If you look at the minutes of April 2, and I
2 encourage you did do that, D 74 in evidence, you will see
3 that they begin the meeting with the discussions by Randy
4 Babbitt. They go through all routine business and then the
5 issues gets called late in the afternoon. There is no
6 indication of presentations. There is no suggestion of
7 bullying.

8 Look at the documents that were prepared and sent
9 out on April 3rd. You recall Captain Pastore sends out an
10 announcement to all TWA pilots on April 3rd. Let's pull a
11 couple up quickly. There are a handful of document by the
12 way that I really encourage you to sit and review carefully.
13 You are going to get a mountain of documents. You may not be
14 able to see it. It is a lot of material. If every one of
15 you took the time to go through every document, you would be
16 here for weeks trying to figure this out. You can certainly
17 do that. That is up to you. But there are a handful of
18 documents I want to encourage you to review. One is D 15.
19 This is the report of Captain Pastore. Pull that up real
20 quick.

21 This is where if we go to the next page he talks
22 about what happened at the meeting. Summarizes what the
23 issue was on April 3rd. The alternative facing our MEC was
24 to fight the 1113 motion in court. Not one of our advisors
25 believed that we would be successful against the 1113. The

1 Court, referring to the bankruptcy Judge you heard about,
2 Judge Peter Walsh in Wilmington, thus far has sided with TWA
3 and American on virtually every important issue. If we did
4 not agree to the new CBA with TWA Airlines LLC and the Court
5 granted TWA's 1113 motion, as expected, we would lose all of
6 our contractual rights, including our scope. Pretty succinct
7 summary of what happened.

8 When you read this document, see if there is any
9 indication in there of last-minute coercion, of people not
10 being prepared, he says by the way, contrary to what Young
11 and Altman and Case and Hollander said that Wilder agreed. I
12 showed you some testimony a couple minutes ago from Altman
13 where he said, Wilder didn't agree. He didn't say he, the
14 1113 would be granted. That is one example, and I ask you to
15 review that.

16 D 16, pull that up. That is the letter that goes
17 out from the two Council 3 representatives, Mr. Rautenberg
18 and Ms. Young.

19 At this point in time, the day after the decision
20 on April 3, they are on the same page literally. They both
21 signed the letter. When they got up on the stand they were
22 miles apart in terms their recollection. But look what they
23 said collectively in a letter sent the day after the meeting.
24 "The MEC has consulted extensively with a large group of
25 professional advisors on the CBA negotiations, the merger

1 negotiations, and the bankruptcy process."

2 And then it identifies all advisors that you heard
3 mentioned, a few of whom testified in court. The unanimous
4 opinion of our advisors, including Richard Seltzer, the
5 motion experienced Section 1113 attorney available, the
6 likelihood of ALPA's prevailing in an attempt to defeat TWA's
7 CBA rejection application was virtually nil. Next page.

8 Attorneys advised the Bankruptcy Code does not
9 provide the Court the authority to modify the contract. In
10 effect, the contract would have to be rejected or retained in
11 its entirety. This aspect of the situation created a high
12 probability that the representational status of ALPA would
13 also be affected.

14 Any suggestion of coercion or railroading in that
15 letter? No. There is none.

16 The third document I am going to mention it, you
17 recall it, I won't bother projecting it, the April 10 letter,
18 D 35, that goes out from Council 2, that is the letter signed
19 by case and by Hollander and Singer. There is no suggestion
20 of coercion or last minute rush or anything to that effect.
21 What the letters do is they explain the very thorough,
22 deliberate process that the elected members of the MEC went
23 through in making the difficult but clear decision that they
24 should accept the new collective bargaining agreement as part
25 of that process, or scope.

1 Let me just, let me dwell for a minute on one other
2 aspect of this. The plaintiffs also have a version of what
3 happened at the meeting on March 21 and 22. Okay. You may
4 recall that very important meeting. What has happened
5 leading up to March 21 and 22 is on March 15, the bankruptcy
6 Judge approves the American transaction, March 12, a Monday,
7 couple days later, March 15, American again on behalf,
8 really TWA, on behalf of American, goes ahead and files a
9 Section 1113 motion. That brings this whole issue ahead.

10 The motion, as you heard many times, is scheduled
11 for a hearing in the bankruptcy court on April 6. A day or
12 so after they file the motion they put this proposed
13 collective bargaining agreement out there. Remember it has a
14 time line that says this is going to be withdrawn. On the
15 date of the 1113 hearing so it is this carrot and stick
16 approach. The carrot is here is a new collective bargaining
17 agreement but you have to accept it before April 6. The
18 stick is the 1113 motion. If you don't accept that, then you
19 have no contractual rights.

20 So these are pretty important events, pretty
21 significant events. And what does the MEC, the leadership of
22 the MEC, okay, remember the leadership of the MEC, Robert
23 Pastore, here is a guy who was a former board member of TWA,
24 Inc., went to the board meetings, understood the financial
25 condition, was there when the board voted to approve the deal

1 with American, the deal that provides for waiving scope. He
2 knew from having been through the wars, as did many TWA
3 pilots like Steve Rautenberg and Dave Singer, they have been
4 through the prior bankruptcies. They knew what could happen.

5 He was willing very sensibly to move ahead with the
6 whole process.

7 So what happens is they schedule a meeting on March
8 21 and 22. What is the purpose of the meeting? The purpose
9 of the meeting is to have advisors come in. Than indeed
10 advisors come in, and they analyzed the 1113 motions,
11 remember those memos we talked about? We got the agenda for
12 March, 14. We got the memos Mr. Holtzman sends out to Mr.
13 Warner and to Richard Seltzer, what about the 1113 motion?
14 What about the contract rights? What about the right to
15 strike? You remember those. You heard those just within
16 the last week or so. Advisors go out and research the issues
17 and figure out as best they can what is going to happen and
18 everybody gets together on March 21 and 22 to try to figure
19 out what do we do in response to the carrot that is being
20 dangled in front of us and the stick that American is ready
21 to bring down on their heads. What is the plaintiffs'
22 version? What is the version of Altman and Young and
23 Hollander and Ted Case, we admit we were there and we admit,
24 you may recall me doing this, we admit that there were two
25 executive sessions. One on the 21st, for over three hours

1 with advisors, and a second one on the 22nd. Also longer
2 than three hours with the advisors. We don't recall which
3 advisors were there, and we don't recall what was discussed.
4 No recollection whatsoever.

5 Here is the key meeting to figure out what to do
6 and they don't recall anything. Okay. So that is the story
7 that the plaintiffs' witnesses have told you, that we don't
8 recall anything of consequence on the 21st and the 22nd. We
9 weren't there on April 1. We don't think we were invited.
10 We showed up on the 2nd and we were railroaded. None of that
11 is true.

12 None of it is true. And I ask you to go back and
13 think about the comment that Mr. Hollander made about this
14 was like a Broadway play. Everybody was singing to the same
15 tune. Is that what happened here in terms of the plaintiffs'
16 story. He is accusing the ALPA advisors of organizing and
17 conspiring to try to railroad the plaintiffs. But what he
18 accused them of is exactly what the plaintiffs have done in
19 this case. Hollander and Young and Case and Altman did on
20 that stand, under oath, in front of you.

21 Now, I want to mention a couple other aspects of
22 their testimony that I would like you to think about it.
23 Remember Mr. Altman came in and said that he attended a
24 meeting of Council 4 on March 30, and if we pull that meeting
25 materials up, that is D 365.

1 What is happening here, as we discussed, is the six
2 people who get to vote on the second. They are the elected
3 representatives of all the pilots, the whole 2,300 pilots.
4 They know that they are responsible for the pilots and have
5 to keep the pilots up-to-date in terms of what is happening.
6 So what happens in anticipation of a decision on the 1113
7 motion is that on March 21 a meeting is scheduled out of
8 Council 4 of the local council people, and it is pretty
9 obviously for the purposes of getting some updates and
10 negotiating committee update, and a TWA American Airlines
11 merger update. That is the notice of the meeting to take
12 place on March 30.

13 What happens at that meeting? Let's look at the
14 minutes, the official minutes. First page of the minutes.
15 Mr. Altman. What does he do? He acts as vice chairman of
16 Council 4 as well as vice chairman of the negotiating
17 committee. He is in the know. He knows what is going on.
18 Gave extensive background and update on the current status of
19 negotiations with the company regarding the CBA. He also
20 spoke on the significance of the upcoming Section 1113
21 motion to be heard a week from today in the bankruptcy court.

22 He took many questions from, and provided answers
23 to the members present. Now, you think a meeting on March 30
24 is an about a week after the meeting on March 21 and March
25 22. Do you think he showed up at Council 4 and told the

1 people who elected him, who entrusted him with the ability to
2 make decisions, do you think he said yeah, I was at the
3 meeting on the 21 and 22 but I don't recall which advisors
4 were there and I don't recall what advice they gave? Are you
5 kidding?

6 Okay. He knew exactly what was going on, and he
7 had a little bit of amnesia problem, as did Young, and Case
8 and Hollander. What is the result of the meetings on March
9 30?

10 Mr. Altman tried to tell us that the direction
11 given by the pilots on March 30 was don't waive scope. Okay.
12 Let's look at the resolutions that got passed and I ask you
13 is there anything in there that in any way shape or form
14 suggests that the direction is don't waive scope.

15 Go to the second page.

16 Let's look at the top. The direction given is, the
17 LEC was directed to secure the TWA/ ALPA CBA throughout the
18 life of TWA Airlines, LLC. Seconded. Discussion held. Here
19 is the direction. Get the LLC contract. Okay.

20 Well, getting the LLC contract means what in terms
21 of waiving scope? It means you are waiving scope. Okay.
22 And again, I encourage you to read through the minutes and
23 satisfy yourself that there is nothing in there that is
24 consistent with what Mr. Altman got up on the stand under
25 oath and told you his direction was. He was told don't fool

1 around. Make sure you get a contract. We want jobs.

2 And if you think back to the vote that takes place
3 on April 2, remember that roll call vote that you saw
4 probably more times than you would like to, some of the
5 people are splitting their votes. What do Altman and Pablo
6 Lewin out of Council 4 do. Every single vote they have, 90
7 for Altman, 90 for Lewin, in favor of the new contract. And
8 of course that means waiving scope. So they did exactly what
9 they were directed to do Council 4.

10 Council meetings, let's go back to Mr. Hollander.
11 Mr. Hollander testified that he attended a meeting of Council
12 2 at some point in March. He was uncertain of when he claims
13 that happened and that the overwhelming direction given out
14 at Council 2 at this meeting was don't waive scope. Well,
15 did you talk to him about the 1113 motion? I don't recall.
16 Did you talk to them about the collective bargaining
17 agreement that had been offered by TWA LLC? I don't recall.
18 But I know the direction was don't waive scope.

19 Do you think that meeting really happened? Do we
20 ever see any minutes of that meeting?

21 Mr. Singer is out of Council 2 and if you recall
22 one of the questions that I asked him when he got up on the
23 stand was do you recall a meeting in March of 2001 out of
24 Council 2 where any of these discussions were discussed. He
25 said no, absolutely not. And look, I think we have the blow

1 up of it somewhere. But if you remember back to the roll
2 call vote, the roll call vote on April 2 is Mr. Hollander
3 splits his vote, some in favor, some against, and of course
4 the overwhelming direction out of Council 2 was don't waive
5 scope. He would have voted all and all against.

6 What is Mr. Singer? Mr. Singer votes the large
7 majority of his votes in favor of the collective bargaining
8 agreement, CBA. That is inconsistent with the idea that
9 there was direction out of Council 2. If you go and if you
10 have time, you can look, remember Mr. Case and Hollander get
11 Mr. Singer recalled. There was this big debate in Council 2
12 at a meeting of June 26 of 2001, and we have those minutes.
13 There is no suggestion in those minutes that Mr. Singer
14 disregarded any direction from a prior meeting. You would
15 expect if a meeting really happened in March of 2001, as
16 claimed by Mr. Hollander, you would expect there to be some
17 indication during the recall debate that Mr. Singer, Captain
18 Singer, we told you to do something on April 2 and you
19 disregarded us, and there is nothing in there to suggest
20 that.

21 So here is another situation where Mr. Hollander is
22 just making stuff up to try to dramatize what he claims
23 happened on April 2.

24 I asked you to make reference to the reports of
25 April 3 and 10 of 2001 to satisfy yourself that there is no

1 suggestion of last minute advisor coercion. You will see
2 that those reports, I think, outline, and you will decide for
3 yourself, they outline in a very comprehensive and reasoned
4 way what the decision was.

5 You can also look at the minutes of April 2, D 74,
6 to see if there is a suggestion that people were pressured.
7 Of course they are not. These are official MEC minutes
8 prepared by who? By the MEC. It is not the advisors. No
9 one is scrubbing these things and telling them what to say.
10 But I want you to think for a minute about the bigger issue
11 of whether the pilots who are making decisions on behalf of
12 the rest of the pilots, these elected members, whether they
13 are really the kinds of individuals who are likely to be
14 bullied by anybody.

15 Start with Sally Young. She told us she had been a
16 pilot, had been a school teacher and got burned out and went
17 and got a career counselor who told her she should either be
18 a racecar driver or a pilot. We know she became a pilot.
19 Sally Young, who is a person at a meeting in March of 2001
20 with dozens of TWA pilots and Jeff Brundage, remember Jeff
21 Brundage, ,he is the vice president for employment relations
22 at American, one of the top managers of the company, she
23 calls him out at a meeting and says you are being
24 disingenuous. Remember I questioned her? You called out a
25 high ranking American official in front of TWA pilots? You

1 embarrassed him by calling him insincere. She did it. Is
2 she the kind of person that is going to get bullied by, how
3 about a guy like David Holtzman? There is a really
4 intimidating guy. Can you imagine Holtzman intimidating
5 Sally Young? Sally Young is the one at the November 7
6 meeting, if you recall that is the meeting that was secretly
7 recorded by some people, they wanted a record of what
8 happened. That is the meeting and we have the transcript, it
9 is marked as D 399, what is the meeting where the meeting
10 begins with Sally Young interrogating Clay Warner. She is
11 like cross examining Clay Warner about what happened earlier
12 the in are in the year. Clay Warner, you saw him. He is a
13 smart guy. He is not a guy who doesn't know what he is
14 talking about. Was she intimidated by Clay Warner?
15 Absolutely not. Read the transcript. That is the same
16 meeting when Sally Young doesn't get her way, remember, Steve
17 Rautenberg wants to push ahead and accept the deal on the
18 table and we have this parliamentary maneuvering which Sally
19 Young doesn't want to second the motion and the advice from
20 ALPA, based upon their Constitution and bylaws, is that she
21 can't prevent the MEC from operating by refusing to second
22 the motion. In effect she would be vetoing any activity.
23 You will see in the transcript, I think I may have asked her
24 about it. You can read the transcript. She doesn't like the
25 result, so she says at one point for the record, this is

1 bullshit. It is absolute bullshit.

2 Here is a woman who stands up for herself. You
3 think she is the kind of person who could have been bullied
4 or coerced on April 2?

5 If what the plaintiffs say happened had really
6 happened on April 2, Sally Young would have stood up for
7 herself. How about Howard Hollander? Howard Hollander is a
8 guy who told you when he began to testify that one of the
9 early things that happened to him as a junior pilot, remember
10 his story about this trans Atlantic flight where one of the
11 engines goes out and they are concerned about whether you are
12 going to have fuel, okay? He goes to the captain and says we
13 can't do this by the book. Okay. When we ought to do is run
14 out the fuel in this one engine and then I can determine what
15 the problem is.

16 Here is a guy who is fast on his feet, who doesn't
17 necessarily follow the rules, if he thinks that it is
18 inappropriate to do so. Do you think he is the kind of guy
19 who would bully any of the people we are talking about?
20 Absolutely not.

21 How about Rautenberg and Singer? They came in and
22 talked. Did they testify that they, or anybody else was
23 bullied at the meeting on April 2 or before that? Remember
24 all the questions? Was anybody told that they had to vote
25 that day? Was anybody yelled at? Was anybody, did anybody

1 ask questions that they couldn't -- that weren't answered by
2 advisors? Remember the litany of questions I asked them and
3 I asked the same questions of advisors. No, absolutely not.
4 Rautenberg told you that the decision to be made on April 2,
5 it was made, and the decision that was well thought out, that
6 was thorough answer that was the right decision.

7 Remember, just to amplify on that point, how
8 independent these pilots are, and how responsible they are in
9 terms of the decision. Rautenberg is the one who testified
10 that he went on the internet and got a copy of Section 1113.
11 He wanted to look at the statute itself. When the 1113
12 motion was filed, he got a copy of the motion from David
13 Holtzman, and he read it. He sat and read it. You can do
14 the same, it is in evidence, and made up his own decision and
15 he made his decision based in part on his observations of
16 this bankruptcy Judge, Peter Walsh, who was very much adamant
17 that the only way to go in the TWA bankruptcy was with the
18 American deal, and in the context of all of the creditors,
19 the unsecured increased torts, the 20,000 employees,
20 everybody understood, as reflected in the April 3, and April
21 10 documents I referred you to, everybody had understood that
22 Judge Walsh was not going to let a group of 2,300 pilot stand
23 in the way of a deal that made sense for everybody else.

24 So Steve Rautenberg was not going to be bullied and
25 wasn't bullied, and Made up his mind. Here is a guy, just to

1 remind you, who was a Navy pilot and who took a job in a
2 commercial, as a commercial pilot of TWA. He got furloughed
3 for five and a half years. And during his time off he
4 actually went and got an MBA, and was probably pretty well
5 qualified to look at information about TWA's financial
6 circumstances.

7 He thought this through independently, he did his
8 job, and he understood from having been furloughed and having
9 lived through the prior bankruptcies that it didn't make
10 sense, and it wasn't responsible to roll the dice with the
11 jobs of 2,300 pilot by rejecting the collective bargaining
12 agreement and taking the chance that American would walk
13 away, it didn't make sense to try to stop the whole
14 transaction, I mean you want jobs at American, why would you
15 stop the transaction from going down. How does that make
16 sense?

17 More on that in a couple minutes.

18 Same with David Singer. David Singer, like
19 Rautenberg, is an older fellow. Even though he wasn't that
20 senior as a pilot. If you will recall he made the mistake of
21 going to law school and practicing as a lawyer for a couple
22 of years, and then got into what he really enjoyed doing.
23 But Singer sat there and thought this through and made the
24 responsible decision that you can't fight this. This is the
25 way to go.

1 Just to give you a sense of how, I think thorough,
2 a guy like Singer was in making his decision. Let's pull up
3 if we could D 384. If you recall during the period of,
4 leading up to the meeting on, the meetings on April 1 and 2,
5 Singer found an article that had to do with the issue of
6 seniority integration in a book. I think he said he was a
7 Cornell grad. He was up at Cornell and somehow came across
8 this book that had been written and published by Cornell
9 Press. It talked about seniority integration.

10 The particular chapter that caught his interest was
11 a chapter that had been written by two people, one of them
12 was Wes Kennedy. You may recall mention, Wes Kennedy was the
13 lawyer representing the APA, the Allied Pilots in the merger
14 integration. So if you turn to -- I am sorry, go back to the
15 first page. Here is a guy who goes out independently, he
16 goes out, finds the article that might be of interest.. This
17 is Suzi Manoni, one of the support people who works at TWA
18 MEC and is responsible to set up meetings and the like.
19 Suzi, please copy this article by APA's merger attorney,
20 Wesley Kennedy and distribute to the MEC, the officers and
21 the MOC, ASAP.

22 I believe the MOC is a reference to the merger
23 oversight committee. This is March 30. Let's look at a
24 couple aspect of the article that are important. Go to the
25 next page. Blow up the yellow stuff.

1 What the article does, you can take the time to
2 read itself, it talks about the history and the evolution of
3 merger integration in the airline industry. And the
4 conclusion of the article is that the process that now
5 prevails in the industry, and that has replaced the orderly
6 procedures of section 3 and 13 is the law of the jungle under
7 which the stronger pre-merger employee group, particularly
8 when it is supported by management at the merged carrier, is
9 able to impose its will on the smaller pre-merger group.

10 That is exactly the situation the TWA pilots were
11 faced by. American pilots were much bigger, 11,000, and they
12 are supported by American Airlines, to say nothing of the
13 fact that they are supported by a collective bargaining
14 agreement which gives them the right to staple. So the two
15 points I think you can draw is, one, Singer is out there
16 reading on his own. No one is telling him what to do. He
17 is an independent thinker. He is being responsible and
18 thorough so he can make the best decision for the TWA pilots,
19 and, two, he goes into this decision, as do all of the
20 members of the MEC with their eyes wide open about what is in
21 store when they have to sit down and deal with the American
22 pilots. What is in store is the law of the jungle. There is
23 not a whole lot that you can do about that.

24 Let's talk about some of the other people who were
25 involved in this process and who were at these meetings and

1 were getting the documents who you didn't hear from on the
2 plaintiffs' side.

3 I will do this quickly. We mentioned Robert
4 Pastore before. He is the master chairman, the guy who was
5 on the board of TWA. He is in the thick of this. Okay. Did
6 you hear him come in and testify that there was coercion or
7 bullying or bad things happen to the people involved in the
8 MEC leading up April 2? Of course not.

9 Scott Shwartz, he was the master vice chairman.
10 You see his names all over the documents, he is at every
11 meeting, he is on the list.

12 I am not going to walk through every document, but
13 if you will recall the reports Richard Seltzer sent about the
14 bankruptcy, the long list of cc's, if you recall the memos
15 that David Holtzman put together to Clay Warner and to
16 Richard Seltzer. We need research on this issue. What
17 happens? Is there a right to strike? There is a long list
18 of cc's. Pastore and Shwartz are on the list. Robert Stow
19 is secretary treasurer. He is at every meeting, part of the
20 discussions. Keith O'Leary, the communications committee
21 chair. Where was he?

22 I will show you what his view of some of these
23 issues was. If you pull up D 18, please. D 18, Ms. Young
24 talked about this, a confidential strategic planning
25 development that the testimony is this was put together by

1 Mr. O'Leary.

2 Just to focus on this idea that the MEC was
3 railroaded on April 2 to waive scope but they had no idea
4 because of prior advise it was going to happen, if you turn
5 to the second page, please. We highlighted before. What
6 does he say? He says a loss of scope seems to be a foregone
7 conclusion. Our MEC needs to again leverage and engage in
8 tactics to accomplish our objectives without scope.

9 If we flip along to the next page. The TWA pilots
10 are going to lose their scope one way or another.

11 None of this popped out of the sky on April 2. You
12 heard this in the testimony of Mr. Seltzer and Mr. Warner and
13 Mr. Holtzman that it was being analyzed and discussed.

14 Just let me focus on one other aspect of this.
15 There are a couple others that are important. Where we get
16 into the next phases. I am still talking about April 2.
17 Flip to page 4 of 8 . Strategic action. The proposal here,
18 make it difficult public relations wise for the APA or AMR to
19 treat us extremely unreasonably or fail to keep their
20 promises. Action objectives. He positioned the TWA pilots
21 as reasonable and the good guys. Continually speak publicly
22 in a constructive but frank manner. Maintain good media
23 relations, et cetera. Anything in there about we need to
24 engage in dirty tricks? We need to filed meritless lawsuits?
25 Any of that stuff in there? No.

1 Again, I go back to the point as we will in a
2 moment, when we get to litigation. Whenever you have a big
3 group of people, people will disagree. They will disagree
4 based upon their experience and their seniority. I think you
5 understand from the testimony that a guy like Steve
6 Rautenberg, who had been through the wars, who understood the
7 problems, he didn't want to take chances. He wanted to get a
8 deal.

9 One of the things he said, if you recall, is when
10 they were selecting people for the merger committee, he
11 wanted people on the committee to have reasonable
12 expectations. What do you mean by reasonable expectations?
13 He thought not people who thought date of hire was even a
14 possibility in seniority integration.

15 What does Sean Clarke say? Remember Sean Clarke?
16 He is the guy who is 30 years old, he had the landscaping
17 business on the side for a period of time. He was on the
18 merger committee. 30 years old, had been flying at TWA since
19 1996. He gets up and the first thing he says, we talked
20 about his expectations, is I expected date of hire. How in
21 the world do you expect date of hire integration in this
22 transaction?

23 Didn't you read the announcement of the deal in
24 January which said that waiver of scope was a condition of
25 the deal? Didn't you understand that the American pilots had

1 a contract that required them to staple?

2 And just to amplify that point because I think it
3 is important. Let's go to D 7, please. I want to show you
4 how publicly known and how widely known it was, that scope
5 had to go, and that there were issues.

6 This is a Council 3 information update. I think
7 you heard described as the way the MEC and the council, the
8 LEC, communicated was they had these code-a-phones. People
9 could call in and get the message and there.

10 Written versions are of them. Here is one January
11 18, 2001, about a week after the transaction. If you flip to
12 the second page, it is going through and summarizing what the
13 American deal is. In black and white what, the scope clause
14 in our current contract will not apply to this action.

15 Flip to the next one, issues of pilot seniority
16 will be negotiated between ALPA and the pilot union. It
17 talks at the bottom about this, so it is no secret that
18 seniority integration is not going to be date of hire, and to
19 the extent you have more junior pilots or less experienced
20 pilots taking positions, they are separated really from
21 reality and they are certainly not positions that are adopted
22 by seasoned, intelligent people on the MEC, people like Steve
23 Rautenberg, and at the time, Sally Young who voted in favor,
24 Alan Altman who voted in favor. And certainly they are not
25 positions that anybody is suggesting who was adopted by these

1 other senior people.

2 But I have shown you Keith O'Leary's document on
3 April 1 where he talks about the fact that scope is history,
4 it is a foregone conclusion. Then the last person who you
5 didn't hear from on the plaintiffs' side is Ron Kiel. He is
6 the chairman of the negotiating committee. He is the guy who
7 spends all the time, you have some of the minutes, you will
8 see some of the, the almost verbatim minutes, he helps
9 negotiate the 80-page document dated March 31, the document
10 sent to the MEC a day or so before, and that is the document
11 that gets further negotiated, there is a meeting of the
12 negotiating committee by phone on April 3rd. When the
13 document gets finalized and signed, it is signed by Captain
14 Woerth, by Robert Pastore, the master chairman and by Ronald
15 Kiel.

16 Again, if you go back to the idea these guys were
17 experienced, they take their responsibility seriously. Do
18 you think even if there was bullying or coercion on April 2
19 that they would have felt bullied or coerced the rest of the
20 week before they signed the document? Absolutely not.

21 So think about that. I think one of the arguments
22 you may hear from the plaintiffs' side is well, this should
23 have been put out for ratification. Again, the testimony you
24 heard it is that up to the MEC to decide if they want to put
25 something out for ratification and the decision was made in

1 this circumstance that there probably wasn't time. Could you
2 accepted around a document, an 80-page document, to 2,300
3 pilots on April 2 and give them a chance to read it and vote
4 on it before April 6? Maybe you could. Is it possible?
5 Perhaps. But are you going to get intelligent feedback? Do
6 you really have time to have the meetings and to discuss what
7 happened?

8 And when you think about this issue, this
9 argument, that you may hear, I don't know, that it should
10 have been put out for ratification, remember, the pilots
11 rule. The MEC makes decisions. Do we see a resolution, do
12 we even see a motion, much less a resolution, that this
13 contract should be put out for a vote? No. That is a
14 decision that the members of the MEC, don't they need advice
15 from Richard Seltzer or Clay Warner or David Holtzman or
16 Michael Glanzer about whether to put something out for
17 ratification. That is something that is purely within the
18 expertise of the members of the MEC. They didn't do it.
19 That is not something anybody can blame ALPA for.

20 Let's talk for a minute about Wilder's injunction
21 theory, because you did hear some of the plaintiffs'
22 witnesses say, well, you know, Wilder had this idea, we
23 should go to court and if we weren't going to go to court we
24 should at least hold off until courthouse steps. Wait until
25 the last minute.

1 Let me talk for a moment about the last idea, that
2 there was more time that we could have waited a little bit
3 more. Look, the vote is on April 2. The deadline, the
4 hearing date for the 1113 motion, is, it is April 6. You got
5 four days. And between April 2 and April 6, the agenda, if
6 you recall, is you got to go back and negotiate some further
7 points and resolve some further points and wrap up some other
8 loose ends.

9 So what do you mean, go to the courthouse steps.
10 You mean show up at the Court house on April 6 and if
11 American hasn't backed off try at the courthouse to negotiate
12 the last couple of points. There is no time to do that if
13 you are to go proceed in an orderly fashion to do that.

14 How about the injunction theory? Couple problems.
15 One, Wilder put it out there and he had a fair opportunity,
16 as you heard from advisors, to talk about the lawsuit and try
17 to persuade the MEC it made sense. The MEC never voted to go
18 in that direction.

19 I talked to you at the very beginning about
20 litigation, and Judge Irenas will instruct you about
21 litigation, members of the union don't have the right to
22 force a national union to file a lawsuit. We have a process
23 here. The members of the MEC discuss and debate and vote and
24 if they thought on April 2 that a lawsuit was the way to go,
25 some somebody would have made a motion, it would have been

1 debated and it would have been resolved. Never happened.

2 Why? Because it, it didn't happen because the lawsuit had no
3 legal merit.

4 I want to dwell on that for a moment. So there are
5 no questions about that in your mind.

6 What had happened if you recall from Richard
7 Seltzer's testimony is that Wilder had written a memo dated
8 March 13, and that memo was out there along with the two
9 memos that David Holtzman wrote, also March 13. The memos
10 were out there when this meeting takes place on March 14.
11 Just so you have it fresh in your mind, the meeting on March
12 14 is reflected in the agenda, if we can pull that up, D 381.
13 This is where the discussion points are, number one.

14 Recommended strategy, discussion, of Wilder memo. This memo
15 suggesting a lawsuit is out there, 60 minutes. Wilder gets a
16 forum to discuss. Then if you go down to Roman numeral VI,
17 you recall. Holtzman, March 12 bankruptcy memo, there will
18 be discussion about it again.

19 This gives you a sense of how thorough and well
20 prepared advisors and the MEC, the Section 1113 motion hasn't
21 been filed yet. If you recall, it was debated and discussed
22 to some degree on March first. Here we are on March 14,
23 people are strategizing and preparing. Under Roman numeral
24 VII you also have a discussion about the separate memo
25 Holtzman sent to Clay Warner.

1 So what does Richard Seltzer say at the meeting on
2 the 14th about Wilder's idea? And I am just going to quote
3 to you from his testimony. You will recall it I am sure. We
4 can project it. He says the idea that some district judge is
5 going to issue injunctions without sort of taking into
6 consideration what is happening in the bankruptcy, just
7 struck me as completely misleading and incorrect, and really
8 without any basis in the law.

9 Question: How did you express your view at this
10 meeting with respect to Mr. Wilder's injunction theory.

11 Answer. Well, to the extent of, again, we were or sort of,
12 we would move forward at this point. The Judge had approved
13 the American transaction. The 1113 hadn't been filed.

14 What Wilder did of course is that after this
15 meeting where Seltzer is discouraging and said this is not
16 the way to go he, he goes ahead without any vote or without
17 any resolution of the MEC, he writes a letter to Duane Woerth
18 on March 27. That letter is J 41.

19 Remember this. He writes and says, we would like
20 authorization to file suit. And you recall the testimony,
21 that Woerth didn't respond, making an argument from the
22 plaintiffs' side, Duane Woerth ignored this. Duane Woerth
23 didn't ignore anything. What he acts on is resolutions from
24 the MEC, and it never came.

25 So what does Mr. Seltzer say happened at the

1 meeting on April 1. When Mr. Wilder was present, and I am
2 just going to paraphrase what he said. What he said is that
3 he was surprised that this issue came up again. He was
4 surprised Wilder was pushing it, and he said the same thing.
5 He said that it was a terrible idea. And it was not
6 something that should be pushed. He talked, as you recall,
7 about his prior experience, he litigated this issue,
8 remember, he talked about a Second Circuit case, In Re
9 Ionosphere.

10 He said Wilder was just wrong and this was really
11 in his view irresponsible.

12 The other thing he pointed out was that Mr. Glanzer
13 at this meeting was concerned about what American might do,
14 if this lawsuit was filed. And he said Glanzer reported to
15 the MEC on April 1 and he may have said the same thing on
16 March 21 or 22, that Glanzer had had a meeting with the chief
17 financial officer of American Airlines, and the chief
18 financial officer told Glanzer that the chief financial
19 officer opposed the transaction. He opposed the TWA deal and
20 that there was a faction within American that didn't think
21 the transaction was a good idea.

22 So American is divided internally about whether to
23 go ahead with the deal, and all the CFO and the people who
24 opposed the transaction were waiting for is somebody to go
25 out and upset the apple cart. Why would you, why would you

1 encourage that? Why would you risk a deal and all the jobs
2 by doing that?

3 Mr. Seltzer recalled again at the meeting on April
4 1, Mr. Glanzer was pretty adamant that Wilder's litigation
5 idea was not a good idea.

6 Mr. Rautenberg said the same thing on the stand in
7 the case. I asked him what was your reaction to Wilder's
8 idea of maybe filing a lawsuit to prevent the American
9 transaction from going forward? I was opposed to his idea of
10 blocking the transaction. Why would you do it?

11 If there is any doubt about what the other
12 advisors felt Mr. Wilder's litigation idea, I will refer
13 you to J 130, this is in evidence, this is a memo that Mr.
14 Warner wrote over the summer when Wilder came up with the
15 second litigation theory. What he does in the memo, let's go
16 to page 4. Footnote 2.

17 We will come to the other part of the memo, but he
18 is referring back to Wilder's initial litigation theory.
19 Wilder initially advocated litigation against American to
20 enjoin the transaction unless American agreed to follow the
21 procedures for seniority integration set forth in section one
22 of the original ALPA- TWA collective bargaining agreement.
23 All other parties providing advice to the TWA MEC, including
24 attorneys from the legal and representation departments,
25 bankruptcy counsel from LeBoeuf Lamb Green and MacRae,

1 remember that is Steve Tumblin and Cohen, Weiss and Simon,
2 that is Richard Seltzer, viewed Wilder's advice as misguided.
3 Among other reasons, one, strategy had no legal support, two,
4 halting the transaction would have had horrible consequences
5 for TWA pilots, since TWA would have ceased operations
6 immediately. Three. American could easily have used Section
7 1113 of the Bankruptcy Code to eliminate the entire TWA- ALPA
8 collective bargaining agreement including the provisions that
9 Wilder wanted to use as the basis for injunction, so no
10 merit, no strategic benefit, and no support for Roland
11 Wilder's litigation theory.

12 His first litigation theory. We will come to his
13 other theories.

14 Let's pause and just think about what the
15 plaintiffs have not proven in the case with respect April 2.
16 When we go back to arbitrary action, something in bad faith.
17 Have you heard anything in what we discussed here to suggest
18 that ALPA's actions were irrational or didn't make sense?
19 No. Anything to suggest bad faith?

20 The conspiracy theory, let's just talk about
21 whether it makes sense. Everybody knew at this point that
22 ALPA wanted the American pilots back. That is out there.
23 The TWA pilots and the MEC know as a result of the unity
24 resolution that ALPA in the long run wants the American
25 pilots back. So to the extent that there is a concern about

1 the advice you are getting from people like Holtzman and
2 Warner, you discount that. Right. You say I am concerned
3 this guy may have a bias, so I may not interested.

4 Everybody also knew at this point in time from the
5 history that the American pilots were not interested in
6 coming back to ALPA so it is not something that is realistic.
7 Everybody knew the APA would represent the TWA pilots after
8 the integration.

9 So the question is this whole idea of bad faith,
10 this motive, if you will, this conflict of interest I think
11 is what is going to be alleged, think about this. ALPA is a
12 national organization. They represent pilots across the
13 country and Canada. Is it really going to try to market
14 itself to the American pilots or anybody else by doing a
15 lousy job for the TWA pilots?

16 Here is a great way to want people to join your
17 union, is to not do your job. And by the way, advisors, we
18 talked about advisors, let's just keep in mind that most of
19 advisors who are speaking up and giving advice here, most of
20 advisors, they are not ALPA advisors.

21 If you just go back quickly, Tumblin, LeBoeuf Lamb,
22 an independent outside lawyer from Salt Lake City, recall he
23 has been representing the TWA MEC since 1991. Since the
24 first bankruptcy. He in fact was the MEC's representative on
25 the TWA board before Pastore. So ALPA is going to try to

1 tell him what to do, what advice to give?

2 Michael Glanzer, he is the investment adviser who
3 investigated, talked to the CFO of American. He is going to
4 listen to what ALPA wants him to do, and take direction from
5 them. Roland Wilder. Clearly not. He is going to do his
6 own thing.

7 Randy Babbitt. Randy Babbitt has his own
8 consulting firm. He is going to do a great job in marketing
9 his consulting services, if he misleads, or doesn't do his
10 job for the TWA pilots. I mean ALPA is not going to tell
11 this guy what to do.

12 And Richard Seltzer. You saw Mr. Seltzer. He is
13 an independent outside attorney at the Cohen, Weiss firm in
14 New York. Where is there a basis, where is there any basis
15 for even suggesting that these non-ALPA advisors are going to
16 do its bidding and because of some long-term interest ALPA
17 might have in wooing American pilots that they are going to
18 give tainted advice. It just makes no sense.

19 Now, on this conflict of interest issue, you may
20 hear an argument, I don't know, that ALPA somehow, the people
21 somehow didn't know about ALPA's interest in the American
22 pilots.

23 I just want to show you one document that I think
24 is pretty clear in that regard. D 25, please, Council 3
25 communications this is another one of those Council 3

1 communications. This one goes out in May. This is a month
2 or so after, May 8.

3 If you look on the second page, you will see there
4 is a discussion here an integration update. A report that
5 inks aren't going well in discussions with the APA. And one
6 of the things that is a problem there as you can see on the
7 bottom is unlike Mr. Carty, the rest of AA's top managers,
8 and many airline industry analysts, the APA's leadership
9 still refuses to attribute any value to TWA's contributions
10 to the transaction between the two airlines. Which means of
11 course that these negotiations the APA is saying you don't
12 really bring any value as a consequence or you are not
13 entitled to any significant seniority here.

14 But turn to the next page because I want you to
15 understand just how out in the open this interest, this long
16 term interest of ALPA in the APA is.

17 If you look on the left side you see it says, also
18 there is another sub rosa aspect to this hole negotiation..
19 Since the pilots from Continental recently voted to rejoin
20 ALPA, APA is now the only large stand-alone pilots union in
21 the U.S. Talks about the fine. Then look to that column on
22 the right side. The paragraph, "All things considered,
23 perhaps APA's leadership feels they must appear strong to
24 their members in order to maintain their independent status
25 and their position as bargaining agents for the AA pilots."

1 It is no secret that ALPA would like to have AA
2 back in the association. Everybody knew about this alleged
3 conflict, this alleged interest on behalf of ALPA. And to
4 the extent there was any concern that the ALPA advice, forget
5 about the independent advisors, to the extent there was any
6 concern that Mr. Holtzman or Mr. Warner or even Captain
7 Woerth, was somehow biased because of that, it was discounted
8 by the members of the MEC, they either discounted the advice
9 or simply ignored it.

10 Your Honor, I am going to move to a different
11 topic. Is this a good place to take a break?

12 THE COURT: Yes. We will take a 15-minute break.
13 About 20 after eleven we will come back. Again, don't
14 discuss the case. Don't discuss the case, wait until you
15 hear my charge on the law before you start to deliberate.

16 All rise.

17 (Jury leaves the courtroom.)

18 (Recess)

19 (The jury enters the courtroom.)

20 THE COURT: Mr. Fram, you may continue.

21 MR. FRAM: Thank you, your Honor.

22 All right. We are now past April 2 of 2001. One
23 of the claims, I think are going to hear from the plaintiffs
24 side is that Duane Woerth did something terrible a couple
25 days after that, that soured the ability of the TWA pilots to

1 negotiate seniority. And that was to go before the board of
2 the APA an on April 5 and make a comment to them that the TWA
3 pilots had to get real. I think you recall some testimony
4 and some back and forth about that.

5 What I want to show you because I think it is very
6 well go, I want to show you the testimony Mr. Hollander gave
7 about this issue. With respect to the meeting on April 23.
8 If you recall, Woerth went to the meeting before the APA
9 board on April 5. He then was invited for the first time to
10 go meet with the board of the MEC and he did so on April 23,
11 and when he went to the meeting on April 23, 2001, he was
12 asked about, how did it go, what happened, what did you say
13 at the meeting oh April 5.

14 Here is what Mr. Hollander said. Let's start with
15 his direct testimony, and you may recall there was a little
16 argument back and forth about whether he could testify about
17 what was said on the 23rd, was he there. So the question I
18 think it was Mr. Press questioning, were you present at that
19 April 23 meeting? Yes.

20 Was Captain Woerth asked about his visit to the
21 Allied Pilots, that is the American Airline Union, board of
22 directors?

23 He was. He was questioned about not only going
24 there but his comment.

25 Did Captain Woerth deny having made the statement?

1 ANSWER: He did not deny having made the
2 statement. Okay. He did not. Then the Judge made a
3 comment, "Let him finish his answer."

4 The answer was he did not deny making this
5 statement, but his complete answer was that he believed he
6 was misquoted.

7 Mr. Hollander is saying that Captain Woerth didn't
8 deny it, which would suggest that he made the statement.

9 Well, when I got up to cross examine him later that
10 day, the first question, one of the questions I asked him,
11 blow up the cross examination, were you there when Mr. Woerth
12 addressed the MEC on April 23 and 24. Correct?

13 "ANSWER: No, I was not."

14 Well, you can see what he just said. These are
15 verbatim transcripts.

16 "QUESTION: You weren't even at the meeting where
17 he was asked about whether he had made the statement?

18 "ANSWER: Duane Worth's appearance was the first
19 day of the meeting. My recollection is I was not there on
20 the first day of the meeting. So how do you know he did not
21 deny making the statement but believed it had been taken out
22 of context.

23 "ANSWER: I was getting phone calls."

24 Judge Irenas made a comment. I am sorry. I
25 thought when, I asked some questions about this and one of

1 the reasons he explored it, I understood that you were there.
2 That is, you recall enough about the hearsay rule to know
3 unless you hear something directly, there are certain
4 circumstances in which you can't talk about what other people
5 have discussed. It is considered under the law a rule of
6 evidence unreliable. So there is back and forth. You can
7 read it for yourself.

8 At the bottom, at the end of the line, on the next
9 page we have Mr. Hollander saying, he corrects himself. He
10 says, I will yield and say I was mistaken. I was not there
11 for Duane Worth's personal appearance on the first day of
12 that meeting.

13 Well, why would he get up there when questioned on
14 direct and say I was there? And then try to tell you that
15 Woerth didn't deny it, and then when I stood up on cross
16 examination and said Mr. Hollander, were you at that meeting
17 on the 23rd? Immediately changed his testimony. Why would
18 you do that? I will show you why.

19 Let's pull up and project the April 23 minutes. D
20 78. This let's blow up what we highlighted. Announcement.
21 It says at the beginning of the meeting on April 23 Case read
22 for the record the following statement written by Hollander
23 to the master chairman. Quote.

24 "Due to personal reason which we have spoken about
25 last week I am unfortunately unable to attend the TWA MEC

1 special meeting on April 23, 24. It is, however, my intent
2 to attend the second day of the special meeting, if
3 possible."

4 So his buddy, Case, announces at the beginning of
5 the meeting that he is not there and can't be there. So why
6 did he change his testimony when I stood up to cross examine
7 him? Because he knew I read all the documents. And he knew
8 that I was going to confront him with this. And he knew that
9 he couldn't get away with that lie. If I hadn't asked him,
10 Mr. Hollander, were you there on April 23? He never would
11 have corrected that. He would have tried to mislead you
12 about the fact that he was there, and mislead you into
13 believing that Captain Woerth made a statement which the
14 plaintiffs think show is somehow harmful. It shows bad
15 faith. Captain Woerth was trying to undermine their
16 position.

17 One of the instructions that Judge Irenas is going
18 to give you at the end of the case, has to do with the
19 credibility of witnesses. And we certainly have some
20 credibility issues in the case. One of the instructions he
21 is going to give to you will tell you that if you find that
22 any witness has deliberately lied, has deliberately given
23 false testimony, that you have the right to disregard other
24 testimony given by that witness. That is just common sense.
25 If people don't tell the truth and you are convinced, it is

1 one thing to make a mistake. It is one thing to not remember
2 something.

3 But if somebody gets up and really makes a false
4 statement that they know is false, it is common sense that
5 you can't necessarily trust what they say about other things.
6 That instruction is, and I won't try the Latin, but the
7 translation is "false in one, false in all." And something,
8 it is something you ought to think about when you think about
9 the testimony he gave about April 2, when you talk about the
10 testimony he gave in which he claimed there was a meeting of
11 the Council 2 MEC at some point in March. Think about it
12 when you evaluate the testimony, remember he claimed he had a
13 45-minute conversation with Clay Warner where Clay told him
14 the Section 1113 motion will not be granted. Don't worry
15 about it. Remember Clay Warner's response when I asked him
16 did you ever have such a conversation? He said it never
17 happened. Never happened.

18 Just think about that as you think about the case.

19 What about the idea that Duane Woerth was attending
20 a meeting of the APA, and talking about these issues. Is
21 that considered a good thing or a bad thing from the
22 perspective of the pilots.

23 Well, I will show you. If you go back to the
24 minutes, I am sorry, the Council 3, May 8 communication, D
25 25, where this whole issue was discussed, and we talked

1 before about the portions of it where it said it is no secret
2 that ALPA would like to have the AA back. If we turn to page
3 6 of that, item 7, ALPA president speaks to APA about the TWA
4 pilots. It recites an excerpt. It talks and summarizes it,
5 and again, I try to identify documents you should look at.
6 This is one of them. D 25 is one that I think is worth your
7 time. What this reports on the right hand column, what he
8 tells them of course is that the transaction is different
9 from Reno or AirCal, that the APA must realize that and be
10 fair in their negotiations. The next paragraph it is
11 reported, Captain Woerth said the TWA MEC had made a
12 realistic assessment of their situation and made the hard
13 decision and now the APA needs to get realistic and make a
14 hard decision.

15 And Captain Woerth came in here, he came down from
16 Montreal, from his responsibility as U.S. ambassador to this
17 international aviation organization, he took the time to come
18 down here and confront these issues directly. You heard his
19 testimony. He never made a statement to the APA board that
20 the TWA pilots had to get real. He never admitted that he
21 said that, as Mr. Hollander tried to suggest to you when he
22 met with the MEC on April 23.

23 I will point out something else here if you turn to
24 the next page, I mentioned this issue before where it was
25 suggested to you at one point in time that the TWA pilots

1 lost something. Because they gave up their flight pay loss
2 bank, in the collective bargaining agreement. Look at the
3 left column here where it is reported that in losing, in
4 light of losing the 9,000 hour flight pay loss bank
5 previously negotiated with TWA, Inc., Captain Woerth assured
6 the MEC and other members present that the TWA MEC will be
7 provided the funds and other support necessary from ALPA to
8 process MEC activities.

9 In fact, that is what happened. ALPA stepped in
10 and supported the pilots, and said, do your job, do your best
11 work for the TWA pilots and don't worry about the fact that
12 there are flight pay losses. We are going to pay that. We
13 are will go to underwrite that.

14 And it goes on. And give you another example then
15 I will move on. Page 8. Left-hand column. There is some
16 question and answer. Here is what he tells the American
17 pilots. The consequences of not doing the right thing are
18 serious. The APA can use the addition of the TWA pilots to
19 strengthen their position. If not, with a hostile political
20 environment and an aggressive management they may stay a
21 notch below where they need to be.

22 He is appealing to their self interest saying don't
23 be jerks. Bring the TWA pilots in, and join forces with them
24 to get a better job, get a better situation, better
25 conditions for everybody.

1 What is the reaction according to this report of
2 the MEC? To this presentation on April 23? Are people angry
3 at Captain Woerth for talking to the APA? Are they upset
4 about it? Turn to the top of the next page. I will show
5 you what the reaction of the TWA MEC at the time is.

6 "The members applauded Captain Woerth at the
7 conclusion of his remarks."

8 So that is the get real issue, and we summarize it
9 here.

10 I don't think the evidence is contrary.

11 All right. What is the other big argument that you
12 may have heard alluded to for why ALPA acted in bad faith or
13 didn't do its job. I think you have heard a fair amount
14 about the so-called card campaign. I want you to understand
15 the facts with respect to that issue. Because it is very
16 important.

17 I am sure you are going to hear about it when
18 plaintiffs' counsel argues. What is the card campaign?
19 There is an American pilot. His name is Mark Hunnibell. You
20 saw some of his video testimony. He decides to run for vice
21 president of the APA. And what is his platform? Well, his
22 platform is that he wants the APA to follow through what had
23 been discussed to some degree in late 2000, which is to re-
24 affiliate with ALPA.

25 And there had been, I will show you quickly there

1 had been some back and forth, some communications between the
2 American pilots and this fellow, Ron Rindfleisch, who is
3 referred to as Rino, even before the deal is announced. So
4 if you pull up, please, P 147 E. The background here, you
5 have 11,000 American pilots. And obviously a group that
6 large you are going to get people with different opinions,
7 some of them strong.

8 Here is an example, this is an email one of the
9 American pilots sends to Rino on January 4, where he says,
10 ALPA, strength in numbers. I do not know if anyone noticed
11 that the federal courts did not intervene in the Delta
12 Airlines ALPA contract dispute or the United Airlines
13 mechanics dispute. They respect AFL-CIO. We are a speck on
14 the map. We need to become ALPA before openers in June,
15 2001. Times have changed. Openers are of course contract
16 negotiations between the American pilots, and American.
17 Furthermore with Bush in office we need all the national
18 power base we can get.

19 So he is forwarding this along to Mr. Rindfleisch,
20 to Rino.

21 Another example and then I will move on. P-147 H.
22 Pull that up, please. This is another email from, looks like
23 another American pilot talking about these issues. I thought
24 we highlighted part of it. Let's move on.

25 In any event, let's jump ahead to P-147 P, April

1 14. The ALPA card. The second page. This is again, stuff
2 that gets forwarded to Rino because people know he is out
3 there. If you can blow this up, the heading on this is
4 Petretti for President. If you read through this, this is a
5 fellow, an American pilot, who is running for president of
6 the APA, and his platform is he wants to take the
7 organization back to ALPA. It is a long email. I am not
8 going to talk you through the details but this is his
9 campaign statement to the American pilots about why he thinks
10 it is a good idea. April 14.

11 The next document I want you to see is P-147 Q.
12 This is being forwarded again, you see in the name Terry M
13 727. He is one of the American pilots, April 15, forwarding
14 to Rindfleisch, what is best for our future? ALPA or
15 isolation?

16 If you look at the next page of this what you will
17 see, this is Hunnibell for vice president. Mark Hunnibell is
18 running for vice president in that election in, he says,
19 fellow ALPA members. The first paragraph.

20 As a 1989 hire, like many of you I came to American
21 with no personal bias over what happened in the early 1960's
22 when APA split from ALPA. I worked diligently within APA.

23 He goes on and on and he makes his pitch for why
24 the American pilots should elect him and let him follow
25 through and pursue reaffiliation with ALPA.

1 Now, what happened is that as he continues this
2 campaign, this is, you see April 15, later in April
3 apparently, and then in May, he sends out campaign materials.
4 And this campaign materials include some kind of a flyer.
5 They also include a representation card. He gets the idea
6 that a representation card expressing interest in ALPA
7 representation should go out.

8 I think you heard from Mr. Rosen and from Mr.
9 Woerth about what representation cards are, how many you need
10 to do a so-called card campaign. If you recall, there are a
11 couple of ways to bring union members in. One is by
12 negotiating with the leadership of an independent union, and
13 Mr. Rosen talked to you about how that was ALPA's approach.
14 If other pilots were represented by a union, you would get a
15 resolution from the other board. You would then go through
16 the steps of going out and trying to persuade the other
17 pilots that they should go along, full time, I think the
18 testimony was that in the Continental case, it was about \$1.5
19 million spent to try to bring Continental back.

20 So that is how ALPA would, and the other way of
21 course is to do a card campaign. You could do a card
22 campaign. ALPA could send cards to another union. What we
23 have here is we have Hunnibell as part of his campaign for
24 office, within the APA, sending out cards..

25 Let's pull up P-3, please.

1 P-3 is some materials that he later sends to ALPA.
2 But what happens, I am going to show you that he sends out
3 the cards, and has to pay this company called Primadata to
4 print the notices and print his cards and then later on there
5 is a discussion can I get reimbursed by ALPA. The second
6 page of this letter is Hunnibell writing to Rindfleisch in
7 December, December 18, 2001, and what he is talking about in
8 the first paragraph, copies from microfiche and my three
9 payments to Primadata increase. The printer produced and
10 mailed the cover letter and authorization cards. He talks
11 about the other ones. Paragraph 2, 5/15/01 invoice from
12 Primadata, for the handling and postage for the card mailing.

13 So if you flip along, if we flip through you see
14 the cancelled checks, these are checks from May 22, and then
15 if we get along to the invoice, in the right-hand corner,
16 invoice number 15144. Let's blow up mail services. So the
17 mail services, Hunnibell for vice president, he is running
18 for office. Data conversion, email. Data hygiene, addressed
19 corrections, gold letter. Insert two pieces. Seal, zip,
20 sort, sleeve, and strap, etc. \$1332.56.. Below that a
21 separate charge for postage.

22 So what this is, if you flip to the next page you
23 see that you have the, it looks like the invoice from
24 Primadata for the postage. They mailed a total of 11,082
25 pieces, you see that about 40 percent down.

1 This is his mailing. Who is Primadata. Is
2 Primadata some mailing service that is used by ALPA that he
3 is referred to go to? No, they are not. Let's play the clip
4 of the Clark testimony on that, please.

5 (Videotape of Clark, deposition 12/1/06,
6 commencing at 3:59 p.m. is played).

7 MR. FRAM: Now we know who is Primadata. They are
8 the mailing service that the APA uses, and they don't even
9 give that information out. You want to send something out to
10 the American pilots, they have the addresses, they have the
11 information, go to them. Nothing to do with ALPA.

12 Well, what happens to this campaign, Mr. Hunnibell
13 for office. I will show you. If you pull up P-147 T. Go to
14 the bottom. APA information hotline. May 23, 2001.

15 So here is the communication director for APA. The
16 ballots have been tallied for the APA president, vice
17 president, and secretary treasurer. For president, Captain
18 John E Darrah received 3757 votes. Captain Jim Gross
19 received 320 votes, and Captain Dennis Petretti received
20 1,085. Therefore, Captain John Darrah is elected APA
21 president. Petretti you recall is the fellow running for
22 president on an ALPA campaign, how about vice president. For
23 vice president, flip to the next page.

24 First Officer Robert Ames received 3,681 votes, and
25 Captain Mark Hunnibell received 1335 votes. Therefore, Ames

1 is elected, so this card campaign begins at some point in
2 late April. You heard the testimony from Clark that they
3 tried to send stuff out, it got mangled, they sent it again.
4 You saw the invoices from Primadata that Mr. Hunnibell talked
5 about showing they went out in mid May. The whole thing is
6 done, over and done with, the election. This is May 23. And
7 that is the only time the cards get sent out. They get sent
8 out in this window when Hunnibell is running for office.
9 They go out and come back, the evidence you have heard is
10 ultimately about 1,550 cards come back, expressing interest
11 in ALPA. That, as you know, is I think the numbers are about
12 13 or 14 percent of the 11,000 American pilots.

13 What is significant about that? Well, I think one
14 of the conflict of interest allegations that the plaintiffs
15 have made is that the advice of the ALPA people was somehow
16 skewed or biased during the period leading up April 2, 2001,
17 because of the card campaign you have heard so much about.
18 The card campaign didn't exist until late April when
19 Hunnibell and Petretti announced their candidacy for office.
20 It didn't even exist and it couldn't have therefore
21 influenced anybody. It was over and done with in terms of
22 their push at some point in late May.

23 Did Hunnibell and Clark continue to talk to people
24 at ALPA? They did. There is no question about it. They
25 sent Rino emails, with information about what was happening

1 inside of the APA. There was a meeting in July where they
2 could, they for the first time raised the issue about perhaps
3 getting reimbursement, and I think it is pretty clear that
4 ALPA didn't offer to reimburse them initially. Let's play
5 the second clip of Clark and pin down this issue.

6 (Clip of Clark dated 2/01/06, commencing at
7 4:51:45, p.m. played)

8 There is no question you of have seen the documents
9 that in fact Hunnibell and Clark did submit their expenses
10 after this meeting in July, they submitted it a couple of
11 times, and there is no question that there are emails and
12 other communications within ALPA about reimbursing those
13 expenses. These are past expenses going back, but that
14 ultimately doesn't happen because at some point the people in
15 ALPA start to pay attention and realize, well, this is
16 something that is not appropriate for us to do. You may
17 recall the testimony from Hunnibell about how he realized
18 that, and when he realized that.

19 But the fact of the matter is it wasn't ALPA's card
20 campaign. These guys were out there. And there is
21 absolutely nothing wrong with hearing from them and
22 communicating with them. In fact there is a benefit to the
23 TWA pilots, and I want to go back to P-147 P and talk to you
24 about that a little bit.

25 One of the things that is happening after April 2,

1 even before April 2, is people on the ALPA side, on behalf of
2 the TWA pilots are communicating with people at the APA. The
3 merger committees are meeting. Duane Woerth testified that
4 he met with the board and continued to lobby John Darrah. I
5 think you recall him testifying that Darrah was a fairly
6 young guy, as the president of the AMA. APA. He said John,
7 look at the long term. If you want to be the president who
8 presides over seniority integration that causes dissension
9 and bad feelings going forward. Look at the bigger issue.
10 Those communications are going back and forth. Part of what
11 is happening is Rino is getting, I think you have seen
12 circulating information about what is happening internally at
13 the APA. You saw the long list of emails, email recipients
14 and some of those people like David Holtzman are actively
15 working with the TWA pilots.

16 I will give you a good example of one situation in
17 which the information that comes from the APA side gets
18 circulated. This, we looked at the bottom part of this.
19 This is the APA information hotline reporting on the
20 elections. Look what happens. It gets forwarded by
21 Rindfleisch.

22 Rindfleisch sends it to Clay Warner. What does
23 Warner do? Warner sends it to Sunshinelawyer@ ATT.net.
24 Remember who Sunshine Lawyer is? Mike Day. Mike Day, who is
25 the chairman of the merger committee. And he says Mike. The

1 attached email describes the results of the APA national
2 officer elections. I have been told that both Gross and
3 Petretti support realignment with ALPA and that Darrah does
4 not.

5 Then it gets forwarded on apparently from there.
6 So he -- it is inside information. There is nothing improper
7 about getting this information and in fact we know from other
8 documents that members of the MEC are getting this type of
9 information directly. I will give you an example. Let's
10 pull up J 294, please.

11 Let's go to the resigned so people can see where it
12 is. It is, this is an email, that is, March 24, 2001, from
13 Keith O'Leary. Reading, important information from APA
14 website. Confidential. What follows is a lengthy report.
15 Look who he is sending it to. He is sending it to everybody
16 on the MEC. Altman, Babbitt, all advisors. Case, Day,
17 Hollander, Holtzman, Kiel. Look at all the people who get
18 this. And what follows is a detailed report which I am not
19 going to go through, a detailed report basically about John
20 Darrah complaining about how American is beating up the
21 American pilots in negotiations.

22 And as you can imagine, when you are negotiating
23 with another party, it is helpful to know what their other
24 issues and what their problems are. So when stuff like this
25 comes in, it is being evaluated, and what we submit to you on

1 behalf of ALPA is that any suggestion that contacts on,
2 ongoing contacts by Hunnibell and Clark, to ALPA are
3 improper, is just wrong. Nothing wrong with it and this
4 potentially is useful information that can be used to assist
5 the TWA pilots.

6 And the idea that, again, that people, even the TWA
7 pilots, didn't know that there was long term interest, and
8 thought this was improper, is just wrong. I want to show you
9 a resolution that the MEC passed in December, December 7 of
10 2001.

11 Pull up, please, P-356.

12 This is a letter, actually December 6, I misspoke.
13 It is a letter from master chairman Pastore to Duane Woerth
14 forwarding a bunch of resolutions. I just want to talk for a
15 moment about the fifth page of the document. Compilation of
16 actions. December 4, 2001. Go down to the second paragraph.
17 It refers to the fact that ALPA pledge cards are being
18 collected by, at the address of ALPA representation campaign,
19 Redondo Beach, California.

20 You can look at P-3, materials from Clark and
21 Hunnibell. That is a post office box Clark set up in
22 California. That is what they are referring to. Go down
23 to the fifth paragraph. Where as the TWA pilots fully
24 endorse ALPA's short-term goal of recruiting the pilots of
25 American Airlines back into our international pilot union,

1 and the larger goal of extending the benefits and
2 responsibilities of ALPA membership with fairness and equity
3 to all professional pilot groups, this is part of a
4 resolution that is passed.

5 Look at the top to see who sponsored the
6 resolution: Howard Hollander and Sally Young.

7 So what is happening, if you recall, is that single
8 carrier determination, I think you recall that there is this
9 mechanism for the National Mediation Board to decide that
10 American and TWA are really one company now, that the TWA
11 operations have been sufficiently integrated on a day-to-day
12 basis so it is one airline and the APA has filed for a single
13 carrier determination at this point, and the TWA MEC wants to
14 delay that because that is the trigger for the effectiveness
15 of Supplement CC.

16 And they are obviously aware that ALPA will have
17 the opportunity, as part of that single carrier
18 determination, to try to represent all of the American
19 pilots. The American pilots plus the TWA pilots. And they
20 are lobbying out to do that. They say we want you to run and
21 try to represent the American pilots. As you heard from Mr.
22 Rosen, and to some degree from Woerth, they looked at the
23 number of cards that had come in, 1,548 or so, and realized
24 this they couldn't even hit that 35 percent level that you
25 had to have to have some kind of election. You needed 50

1 percent plus and they looked at it, Mr. Rosen said look, I
2 knew in 2000 that American was a long shot. It was at the
3 bottom of the list in terms of pilot groups who were
4 interested. That is why I went to Continental and spent 1.5
5 million there, and that is why I went to Federal Express.
6 His judgment after 20 years of organizing it wasn't
7 worthwhile to pursue the representation of the American
8 pilots. He was right. That is why he came back did in 2002.

9
10 Who were upset about this it? Hollendar and Young
11 were upset about it. They were part of ALPA and thought if
12 ALPA came in and was able to organized APA, it would be good,
13 to have them part of it. The idea that there was something
14 improper about the card campaign, that ALPA was somehow
15 behind it, it, that it was improper for ALPA to be
16 communicating with the American pilots, that is wrong.
17 Absolutely wrong and no basis for it.

18 Let's move on, I will try to do this as quickly as
19 I can.

20 I think you heard more recent about some of these
21 issues.

22 The summer of 2001, what happens as you know is
23 that the TWA pilots put together the so-called Rightful Place
24 proposal, the June 14 document, they send to American pilots
25 where they try to advocate for why they should get something

1 other than stapling. There is a long list of things ALPA
2 does to support that. They authorized the hiring of Michael
3 Tannen. In fact, there is a resolution that is passed by the
4 ALPA executive board that authorizes that.

5 There is a separate resolution that is passed
6 around the same time.

7 Pull up, please, D 158. It is a resolution of the
8 executive council, this is ALPA, as you can see, the TWA MEC
9 has requested authorization to engage the services of an
10 outside consultant to provide negotiation, training and
11 consulting services. Mr. Baeler came in and testified, you
12 recall the older gentleman from New York who came in and
13 talked. The TWA MEC wants some more support for their
14 negotiations.

15 Does ALPA turn him down and say no, you are on your
16 own? No, a resolution gets passed. The fellow is engaged.
17 He goes and helps him. Michael Tannen. Is also hired.
18 Professor Tannen as you recall is the fellow who helps put
19 together the Rightful Place proposal. He does this very
20 complicated economic analysis. There is another resolution,
21 D 159, let's pull that one up, please. A separate
22 resolution. It talks about the fact that the TWA pilots are
23 now facing extraordinary expenses and incurred, with American
24 Airlines which occurred without prior proceeding. They are
25 forced to abandon primary protection and scope. It goes on

1 in a sympathetic and supportive way, it authorizes funding.

2 There is another resolution in September, D 160.
3 This is a little bit later, but the MEC came back and they
4 wanted to have Roland Wilder continue to work with them. So
5 they passed a resolution submitted to the executive council.
6 Do they get turned down? Do people say we think Wilder is a
7 little bit off in terms of the theories? You know, we want
8 somebody who is not so reckless? No. They authorize it and
9 authorize the funding.

10 And as you have heard, and I will talk about it in
11 a little bit more, Wilder continues to work with them into
12 the fall. So in terms of financial support, in terms of
13 other support, is ALPA supporting the pilots over the summer
14 in their effort to negotiate? Absolutely. He absolutely
15 did.

16 And do the people at the MEC recognize that? Well,
17 they do. D 233, please.

18 This is a letter that Captain -- 233. The first
19 paragraph, from master chairman Pastore who you didn't hear
20 from during the trial. Thanking Captain Woerth. I am
21 writing to thank you for your support of our pilot group at
22 the last executive board meeting. With your support the
23 agenda item pledging the full moral support and the necessary
24 funding to enable our MEC to properly represent our pilots
25 passed by acclamation. Support. You can read the letter.

1 July 18 is another letter. D 299. You can read all these
2 letters. I just highlight the one point where master
3 chairman Pastore says that you and the council have offered
4 and delivered significant support to the TWA pilots and we
5 collectively appreciate it.

6 Then he talks about some other official action.
7 Look, you understand from the letters and from the testimony
8 that this is not Duane Woerth making decisions on his own.
9 The plaintiffs want to portray Captain Woerth as some kind of
10 a villain in the case but the fact of the matter is at the
11 national level, ALPA had lots of people involved, and things
12 are done by group vote so that representatives of the other
13 pilot group, work with the other airlines, are involved with
14 the process and they are making judgments about what is
15 necessary or not.

16 Now, what is the result of this? Well, the result
17 of this is the APA doesn't get much ground. I think perhaps
18 the most important document in the whole case that I really
19 encourage you to sit and spend some time looking at is the
20 APA's response. What happens as you have heard is the
21 Rightful Place proposal is put out there. Captain Woerth is
22 front and center, I think you saw part of the video where he
23 introduces the proposal. That was played for you. He is
24 fully supportive.

25 He goes to a facilitation meeting where he tries to

1 advocate on behalf of the pilots. The APA comes back with
2 their position, and that is in the form of a letter dated
3 July 18, 2001, J 323. It is a long letter, and I won't read
4 you the whole thing, but if you read nothing else from cover
5 to cover, I encourage you to sit and read this letter because
6 it will I think help you understand why the APA took such a
7 hard line and why the APA was so unimpressed with the
8 arguments that the TWA pilots were trying to put forward for
9 better seniority integration.

10 And if you turn to the second page of the letter, I
11 will quote just a little bit of it. It talks on the second
12 page, you can see in the middle of the page it talks about
13 the flaws in the APA, the ALPA proposal have led us again to
14 conclude that the structure of our seniority integration
15 proposal is the basis for a fair resolution which gives
16 respect to the Rightful Place of the AA pilots and does as
17 much, if not more, for the TWA pilots. Their proposal, as
18 you will read, is stapling a very significant amount of the
19 TWA pilots.

20 But I want to point you to the bottom of the
21 letter, and walk you through some of the facts that are the
22 basis for the APA's position. I want you to think as you
23 read this about how an arbitrator, remember, we talked before
24 about the fact that what the TWA pilots have given up and
25 what they keep complaining they had given up is not the right

1 to any particular seniority integration. They have given up
2 the right to go before an arbitrator without knowing who he
3 or she would then, and to make arguments about what, quote,
4 "fair and equitable integration" would be. Look at the last
5 paragraph.

6 Needless to say, based on the fact, and our
7 analysis, we disagree. This is not a merger with a complete
8 air carrier. Nor is it a transaction between equals. It is
9 a purchase by one of the largest and most financially stable
10 global airlines, of most, but not all, of the assets of a
11 much smaller, largely regional carrier that was within hours
12 of going out of business.

13 That view of the TWA pilots Rightful Place was
14 certainly shared by your own CEO and former MEC chairman
15 William Compton when he said, at the time the transaction was
16 announced, it has actually been since 1971 that people have
17 worried about their jobs. You think about all these years
18 that TWA employees had to go to bed wondering about their
19 jobs. You think by TWA's management, when it represented to
20 the bankruptcy court that this transaction was the best
21 option, indeed, the only realistic option, that would allow
22 TWA to avoid seizing operations. And again by CEO Compton
23 when he told the bankruptcy court that this transaction was
24 the equivalent of catching the Hail Mary pass.

25 That view was certainly shared by the bankruptcy

1 court when it agreed that this transaction was the only way
2 to avoid the liquidation of TWA and that given this debtor's
3 history, if this Court were to deny the sale of assets there
4 would be an immediate and precipitous decline in the affairs
5 of the debtor with a very high probability, if not certainty,
6 of liquidation.

7 Remember Mr. Seltzer on the stand talking about how
8 struck he was by that very language when he read Judge
9 Walsh's opinion approving the American transaction. And how
10 similar language showed up in Judge Walsh's opinion on April
11 2, denying the stay, a bunch of creditors and other parties
12 had opposed the American transaction, and they were trying to
13 get a stay from Judge Walsh so they could take it up on
14 appeal.

15 If you read that opinion, that is another document
16 I encourage you to look at, it is D 288. If you read that
17 opinion, I think you will understand clearly what the dire
18 financial circumstances were. Just to read one more sentence
19 of this so that you appreciate the perspective of the
20 American pilots. It finally says, and this was certainly the
21 view of your own MEC when it stated at the time the
22 transaction was announced that we believe the American
23 acquisition represents the best opportunity for our pilots
24 and for all TWA employees. "If for some reason this deal
25 does not close, then we face the possibility that all 20,000

1 jobs at TWA will be lost and the traveling public will suffer
2 from less competition."

3 If you read nothing else, read this July letter
4 from start to finish and it will help you to understand why
5 the TWA pilots had no leverage. They had no contractual
6 leverage, they had no leverage in terms of appealing to the
7 economics of the situation. It was a very difficult
8 situation.

9 And we submit that ALPA National did the best it
10 could to support them under very difficult circumstances.
11 But the fact of the matter remains that the American pilots
12 feel strongly about seniority and they are backed by a
13 collective bargaining agreement, contract, and they are
14 backed by American. So what are you going to do?

15 Well, a couple suggestions came out from the
16 plaintiffs in this case. And I want to walk through what
17 they are now claiming, that ALPA should have done to rattle
18 the APA.

19 And the ones that we have been able to identify the
20 complaints are, one, no jumpseat war. Well, talk about that.
21 First of all, ALPA has a jumpseat policy, D 411 in evidence,
22 and the policy says you can't use the policy for political
23 purposes. So the idea that ALPA would engage in a jumpseat
24 war, you recall what it is, the ability of pilots to
25 basically commute to work by going on the planes of other

1 carriers. So you got 2,200, 2,300 pilots who want to disrupt
2 air transportation across the entire country by having ALPA
3 carriers denied jumpseat privileges to American, realizing
4 that American pilots are going to probably do the same. And
5 everything becomes a mess.

6 And you can imagine that if that were to happen,
7 that people would be very upset, maybe the government gets
8 involved, maybe the government ends up doing away with the
9 whole idea of jumpseat privileges for everybody. And indeed,
10 as I think you heard after 9-11, the whole issue of jumpseat
11 privileges gets paired back. So you have a policy, and think
12 about that, by the way. One of the complaints I think you
13 are going to hear from the plaintiffs is ALPA didn't comply
14 with some of its own policies.

15 Well, here is a situation where some, not
16 everybody, not the TWA MEC because, again, it acts as a
17 group. There is no resolution that ever comes out of the MEC
18 that says start a jumpseat war, but you have a handful of
19 pilots, saying just ignore the policy, and let's shake up the
20 industry because we are not getting our way.

21 Duane Worth's response is we are not going to do
22 that. We know it doesn't work from the past and indeed that
23 is probably why the policy gets adopted in 1997.

24 You recall Mr. Rautenberg's testimony. He recalled
25 being in a meeting in Duane Worth's office over the summer

1 where somebody raised the idea of a jumpseat war. What was
2 the reaction?

3 The reaction was he thought it was a dumb idea and
4 it would probably hurt the pilots. And he described being at
5 the meeting with people were coming up with these knucklehead
6 ideas. Remember him using that phrase? He described being
7 at the meeting as embarrassing. It was embarrassing to be on
8 the TWA MEC and have people raise some of these arguments and
9 issues.

10 Was it unreasonable or irrational for ALPA not to
11 start a jumpseat war? I think you know the answer. How
12 about the AFL-CIO boycott that, let's have the AFL-CIO
13 boycott, start a boycott against American because they are
14 not treating us fairly. Let's think about that. The
15 American pilots, their union, APA, has a collective
16 bargaining agreement with their employer that gives them
17 certain rights, and they are standing on those rights and
18 insisting that those rights be respected.

19 Well, why would a confederation of other labor
20 unions criticize another union for wanting the respect of
21 their collective bargaining agreement. This is not a dispute
22 between the American pilots and American, with their being
23 abused. They have a contract. So the idea that a labor
24 organization would criticize a union who wanted to enforce
25 the terms of its contract, is that irrational? Is that

1 unreasonable?

2 What about litigation? Mr. Wilder, as you know,
3 comes up with another litigation idea over the summer. This
4 is the second one. His idea now is we should go and sue
5 American and the APA because they are engaging in
6 negotiations and those negotiations have an impact on the TWA
7 pilots, therefore, we can argue that three are really
8 representing and have obligation under the law to the TWA
9 pilots.

10 I want to walk you through the lead up to this. D
11 42, if you could pull that up, please.

12 D 42 is a memo that Mr. Wilder writes back in May,
13 and I just want you to -- all right, this is a memo and we
14 highlighted a couple aspects. This is in the aftermath of
15 course of the decision to waive scope and he says a couple
16 things in the memo that I think are pretty telling in terms
17 of his argument.

18 All right. He says that I recognize that the
19 threat of such litigation is considered -- he is referring to
20 litigation against the APA, American, and perhaps ALPA.

21 "The threat of such litigation is considered by
22 many to provide leverage that could strengthen our position
23 in merger negotiations with APA. Nonetheless, I believe that
24 concerted pilot efforts to organize and finance fair
25 representation actions are contrary to the pilot groups

1 interests and should not be encouraged by MEC officials or
2 committee members."

3 He then says, in that third paragraph, the one
4 beginning, "In cooperation with ALPA legal."

5 "In cooperation with ALPA legal, but independently
6 if necessary, this firm will evaluate the availability of a
7 litigation option and present it for your consideration.
8 Please understand that any litigation contemplated against
9 APA and AA will be novel and complex. Necessarily, then, our
10 evaluation will remain a work in progress until the merger
11 committees seniority plan has been launched and the
12 facilitated negotiations are underway."

13 Novel and complex. As a general matter is the
14 unreasonable to shy away from litigation that is novel and
15 complex. I don't think so. But he does come up with a
16 specific litigation proposal. It is in D 202 is one version
17 of it. You heard Mr. Warner testify about it. Pull that up,
18 please.

19 It had to happen at least once. I had to mix up
20 the designation. J 202, please.

21 Here is the memo, he outlined the theory. What
22 does ALPA do? Does ALPA say forget it, we already admitted
23 litigation would be novel and complex, we are not going to
24 consider it. No.

25 Mr. Warner testified he took the cases, he did the

1 research. Ms. Wagner helped him and he wrote a memo and that
2 memo is J 130. August 6, 2001.

3 All right. And what he does in the memo, and you
4 can read it if I am allowed, just go to page 4. It gives
5 background, and then on page 4 he refers to the Wilder
6 memorandum. Let me read it to you quickly.

7 He says, TWA merger counsel Roland Wilder has been
8 openly frustrated by the lack of, quote, "leverage" held by
9 the TWA LLC pilots and its seniority integration process. He
10 has consistently attempted to find anything that will
11 increase that leverage. The Wilder memorandum outlined the
12 most recent theory.

13 And then later in the memo, throughout the memo, he
14 talks about the law. He talks about the Railway Labor Act.
15 He talks about the cases. And what he says is similar to
16 what people said when Wilder came up with this first
17 litigation theory. He says Wilder's claim that APA would
18 violate a fair representation duty to TWA LLC pilots whose
19 negotiations with American ignores a fundamental proposition.
20 A union does not owe a fair representation duty to pilots
21 that it does not represent.

22 APA does not represent the TWA LLC pilots, and it
23 will not represent them until the NMB determines that TWA
24 LLC, an American, constitute a single carrier.

25 What he is saying here is that the APA represents

1 the American pilots and it is doing its job to act in their
2 best interest and make sure that the seniority integration is
3 best for them, just in the way ALPA represents the TWA
4 pilots. It is as basic as it gets under the law. He goes on
5 to talk about the cases and to discuss the fact that the
6 couple of cases cited by Mr. Wilder in his memo have nothing
7 to do with this issue. They are inapposite, to quote the
8 phrase that lawyers and judges sometimes use.

9 And the bottom line, on the first page of the memo,
10 again I encourage you to look at this document if you have
11 time. His summary is that the legal analysis contained in
12 Wilder's memo is fundamentally flawed. Wilder is wrong,
13 again. Let's go back. Is it unreasonable, irrational, not
14 to pursue a lawsuit that has no basis? Is venting by suing
15 the TWA -- by suing the American pilots, is that going to do
16 something for you in seniority integration negotiations? I
17 don't think so.

18 So I think I have covered the main claims that you
19 have heard or will hear with respect to ALPA's alleged lack
20 of support, lack of aggressiveness, during the summer.

21 All right. Let's move ahead and talk about this
22 third period where there seems to be some claims that ALPA
23 didn't sufficiently support the pilots.

24 All right. Obviously, you heard a lot about the
25 crisis in the airline industry after 9-11, the planes stopped

1 flying because of security reasons for a week or so, and then
2 people are uncertain, they are not traveling, and because
3 airlines are so dependent upon passengers, all of the
4 airlines end up in dire financial circumstances. A bunch of
5 them file for bankruptcy.

6 You heard discussion about the Air Transportation
7 Safety and System Stabilization Act. 5 billion dollars.
8 This is less than two weeks after 9-11. The crisis in the
9 airline industry is so severe that Congress has to allocate
10 five billion in compensation for lost revenues and make
11 available another ten billion in loan guarantees.

12 If you recall the fall of 2001, President Bush
13 declares the war on terror and aerial bombings in Afghanistan
14 begin. October 7 the Patriot Act was enacted. A lot is
15 happening, the country is in crisis.

16 So you can only imagine the atmosphere on Capitol
17 Hill, and if you recall the atmosphere around the country, it
18 is pretty dire. So what is happening in the midst of that?
19 In the midst of that the TWA pilots are pushing for the Bond
20 Amendment, and one of their complaints in this case is that
21 ALPA did not support the Bond Amendment enthusiastically
22 enough. They didn't get the AFL-CIO to support it.

23 You may recall this claim by Matt Comlish that he
24 ran into Duane Woerth and that Woerth told him that the TWA
25 pilots have to get off the hill. This is another one of

1 those alleged conversations that are put forward, just like
2 Mr. Hollander's claim that you get a conversation with Mr.
3 Warner. And I just want to focus on that because I think
4 again it tells a lot about the flavor of the plaintiff's
5 case.

6 If you recall Mr. Comlish testified about this
7 claim, he tried to make it sound like a confrontation and he
8 remembered the date. October 16 of 2001. Captain Woerth was
9 there, he was in his uniform. I saw him from afar. Remember
10 what he said? He scowled at me. Captain Woerth scowled at
11 him. Wow, what a terrible thing.

12 Then when I got closer to him and tried to engage
13 him, he said the pilots have to get off the hill. I think we
14 scanned it. I want to pull up, when I cross examined him
15 about that. I want you to see this. Again, I think it is
16 important.

17 This is a blowup, the second part of it, do you
18 claim that you had a conversation on Capitol Hill with Duane
19 Woerth about the legislation you are pushing for?

20 That's correct.

21 Tell us exactly what you claim Mr. Woerth said to
22 you when you went up to him at this gathering with respect to
23 the legislation you were pushing?

24 He said you need to get off the hill.

25 You understood that to be him directing you to

1 become off from the legislation. Right? That was the point
2 of what you said before. Yes?

3 What I said was he told me, me and my pilots, to
4 get off the hill. That was the gist of the conversation.

5 So he is resisting me in terms of giving the
6 interpretation he give on direct.

7 Go to the next page. The Judge then asked him
8 directly, "But you understood that, or you, I will ask the
9 question, did you understand he was telling you to stop
10 lobbying for the Bond bill?

11 "Yes".

12 We finally get a direct answer.

13 I then referred him back to sworn deposition
14 testimony he gave in January of this year, when Mr. Katz took
15 his deposition in preparation for the trial. Let's go down
16 to the bottom. He quoted from the deposition. Did Woerth
17 ever say anything to you directly about being opposed to your
18 lobbying efforts?

19 How do you define directly?

20 I mean you are face-to-face with him, or you are in
21 a telephone conversation with him.

22 Says Comlish, "I am opposed to your legislative
23 efforts. Something like that."

24 He avoids answering the question.

25 "ANSWER: Counsel, we had a chain of command and I

1 wanted to honor that chain of command so many of these
2 communications went through the chain of command back and
3 forth to Duane Woerth."

4 Mr. Katz persists:

5 "Question: Well, I am just asking you a simple
6 question. Did you have a conversation directly with Duane
7 Woerth on the phone or in person in which he told you that he
8 was opposed to what you were doing?."

9 His answer was no.

10 This is so important. This confrontation on
11 October 16, 2001, it is so important and it is so
12 demonstrative of Mr. Woerth's lack of support of the Bond
13 bill and ALPA's lack of support, how come he didn't remember
14 this conversation in January of this year. He asked the
15 question directly. So do you believe the conversation really
16 happened? I leave that for you to decide.

17 Now, let's talk about what ALPA did do with respect
18 to the Bond bill. I think when you look at the facts you
19 will understand that the suggestion here that ALPA didn't
20 appropriately support the Bond bill is just wrong. Pull up D
21 94.

22 October 3 letter, Duane Woerth. Do we have that
23 up?

24 This is a couple days, two days after the special
25 interest legislation gets introduced. Here is Captain Woerth

1 writing to Senator Bond. On behalf of the Airline Pilots
2 Association, I want to advise you of our strong support for
3 the Bond bill.

4 All right. December 10, D 165. Another letter he
5 wrote. Representative Lewis. This is December 10, after
6 Supplement CC has been implemented and as I will remind you
7 in a minute after Don Carty told the TWA pilots that the
8 Bond Amendment, if it passes, will lead him to close TWA LLC.

9 But some of the pilots are still pushing. What
10 does Duane Woerth do. He writes and says we support the Bond
11 Amendment.

12 And do the TWA pilots dispute that? Let's pull up
13 the -- pardon me for a second. I will see if I can find it.
14 Otherwise I will move on.

15 I will move on. There is a letter in December, I
16 think it is December 19 -- pardon me for one second.

17 (Pause)

18 MR. FRAM: I think it is D 206. Oh good. All
19 right. Blow up the second paragraph from the bottom, with
20 the help.

21 Talking about Senator Bond and others, the TWA
22 pilots came very close to enacting arbitration legislation
23 during this session of Congress. We wish to thank Senators
24 Bond, Carnahan and others for their efforts. Furthermore, we
25 would like to express our gratitude to our own legislative

1 affairs committee and ALPA governmental affairs for their
2 support and guidance in pushing this proposed legislation
3 forward.

4 So this is an official communication. If you go
5 back to the top of it you will see it is Mr. Glenn Stieneke
6 who sending this out on behalf of TWA LLC. He is the
7 communications guy. Does the MEC as a whole believe back in
8 2001 that ALPA did not appropriately support the Bond
9 legislation? I don't think so.

10 Let's focus on the Bond legislation. I want to
11 refer to the minutes of October 21 to 23. I said to you a
12 couple times there are a handful of documents that I think
13 are truly important that you might want to take the time to
14 review. Certainly the APA response of July 18 is important.
15 One of the other documents is D 88. These are the minutes of
16 this meeting on October 20 to 22. Pull those up, please.

17 I want to call to your attention a couple aspects
18 of this in case there is any thought that the Bond bill had
19 actually a chance of passing. Refer to page 8 of the
20 minutes.

21 What you see is Paul Hallisay who you heard
22 identified by Mr. Comlish, at 14:43 gives a briefing. He
23 talks about the MEC's recent legislative efforts. Stated
24 that he felt that even if the bill passed in the Senate it
25 would not pass in the House. Although efforts to this point

1 have been somewhat successful, the bill would never come to
2 the floor.

3 This issue is very controversial. You can imagine,
4 A, that American and the American pilots are vigorously
5 opposing it. I think you recall that American is based in
6 Texas. We have a president from Texas. We have a large and
7 very powerful Congressional delegation from Texas. We have a
8 very difficult environment at this point in the aftermath of
9 9-11, that is an environment that has got to be hostile to
10 the special interest side. The TWA pilots agreed to waive
11 scope so there is an argument they are trying to do an end-
12 run around the agreement they reached on April 2. As you can
13 imagine, there is not necessarily a lot of sympathy for
14 them.

15 Let's turn to page 8 and get an assessment of the
16 merger committee chairman, by the merger committee chairman
17 about whether the bill had any chance of passing. This is
18 Mike Day. So Mr. Day is at the meeting and he has some
19 comments. And one of the things he says is that he didn't
20 believe there was a chance for litigation or the bill
21 passing. Only leverage was to continue to delay.

22 So he agrees this is an exercise in futility to try
23 to get this thing to pass.

24 What about Senator Bond's office? What do they
25 think about this? Turn to page 14. There is a fellow from

1 Senator Bond's office who apparently attended the meeting.
2 Senator Bond was committed, but had some concerns that the
3 bill could be filibustered. Not a rosy picture. If you go
4 back to page 9 we have Mr. Brundage calling him and I think
5 you heard this quoted a couple times. Where Don Carty told
6 Senator Bond if the bill passes, he will shut down TWA LLC.
7 And just recall Carty's position.

8 AMR, American, made a commitment to its employees,
9 right or wrong. AMR employees cannot fathom an arbitrated
10 seniority list. AMR committed to its employers that AMR
11 would not support arbitration for seniority. If the bill
12 passed, AMR would shut down TWA LLC. Cannot afford to upset
13 the apple cart. He is unwavering in his position. Even if
14 he gets this bill passed, you will wish that you didn't.

15 So think about that in terms of this argument that
16 ALPA should have pushed harder for the Bond bill. It was
17 going nowhere. It really wasn't.

18 What about litigation? We are up to the point now
19 where Wilder comes up with a third litigation theory. What
20 is his theory? He wants to sue to force arbitration against
21 American because it has failed to use its best efforts to
22 help.

23 There is a discussion in these minutes about the
24 litigation theory and I would ask you to turn to page 10,
25 please.

1 Page 12 it is. So Wilder is talking about this
2 issue. He says, it says, Wilder stated he was here to advise
3 the MEC on the law and to help them get where they decided to
4 go. Injunctions were being prepared against a single carrier
5 filing. In order to get to arbitration, all the pieces have
6 to fall in line. First, the MEC must stop AMR from reaching
7 an agreement with APA, and then file injunction on the single
8 carrier filing.

9 Let's talk about that. How do you stop American
10 from reaching agreement with the APA on something that they
11 are going to negotiate? It Doesn't say.

12 This would only be a short delay but cannot stop
13 them from doing this eventually. He acknowledges that. ALPA
14 needs to win the grievance with Richard Bloch on fair and
15 equitable process for integration. Goes on and talks about
16 all the things that have to happen for his litigation theory
17 to have any chance of succeeding, any traction.

18 He also says in that same paragraph, he says if you
19 go down this road, there is nothing to prevent furloughs.

20 He says in the same paragraph, he says AMR would
21 take it out of our hides. Wilder didn't see any local
22 protection to prevent AMR from furloughing heavier on the TWA
23 side. He saw the fight going on through the first of the
24 year. If ALPA came to arbitration, it would be about 120
25 days for the arbitration. This would be a period of

1 vulnerability, as in any war. There would be casualties.

2 So this litigation theory is not one that he is
3 really pushing as a solution. You recall Mr. Rautenberg's
4 testimony, Mr. Rautenberg testified when Wilder put this
5 theory out there and assigned percentages, to all the things
6 that had to happen to succeed, that he did some math, and the
7 chances of success were about 5.6 percent. Rautenberg then
8 went back and reassessed the percentages, the likelihood of
9 the different independent events, and then talked to Wilder
10 the next day and Wilder agreed that Rautenberg's percentages
11 were more accurate percentages. Do you recall what number
12 Rautenberg came up with for the chance of success? 3.6
13 percent.

14 All the things had to fall into place for that to
15 happen.

16 One of the things that it says in here that had to
17 happen was that the arbitrator, this fellow, Richard Bloch,
18 had been assigned to hear the best efforts arbitration had to
19 rule in favor. We had that arbitration decision. In an
20 April 18, April 18 of 2002, it is D 316. Pull it up. I will
21 show you something that is interesting about it.

22 All right. So you heard Mr. Warner testify about
23 representing the TWA pilots in this arbitration over two days
24 in December, he called Hefley and Swanson, Holtzman and Mike
25 Day, and even Sean Clarke to testify, the American people put

1 their witnesses on, they made arguments. They had a mini
2 trial. Just like the trial we are having here. And
3 arbitrator Bloch found against them, and I just want to
4 highlight a couple aspects. If you go to the very last page
5 of the document, I am sorry. Page before the signature page.
6 Page 7.

7 What he says about the efforts that American made
8 in the process. He says, but whatever its flaws, the process
9 itself was one that was negotiated, endorsed by the ALPA
10 representatives. This is not to somehow attribute blame in
11 that process. Given the respective bargaining position as
12 dated above it is unlikely that a better deal could have been
13 achieved. Indeed, bringing the APA pilots to the table at
14 all, under the circumstances, could have been considered a
15 major victory.

16 This is after Supplement CC, this is after all the
17 efforts that you heard about, and I will talk about them in a
18 couple minutes. So Bloch is looking at the evidence as an
19 independent arbitrator, and saying you guys got the best deal
20 that was out there to be had under the circumstances.

21 He makes comments on the prior page about a couple
22 other issues that have come up. I think they are important
23 comments for you to keep in mind.

24 They give you a sense, I think they will help you
25 understand that some of the arguments that the TWA pilots,

1 the plaintiff group are pushing in this case are arguments
2 that, about a dry run before the arbitrator. Top of page 6
3 of 8.

4 ALPA says, in summarizing the argument, that
5 American could have, for example, exercised leverage with
6 respect to the \$45 million contempt fine incurred by the APA
7 following the Reno strike. The suggestion is that American
8 could have somehow modified the repayment terms in exchange
9 for APA flexibility on the seniority issue. But the
10 company's rejoinder on this point is persuasive. The cost of
11 the fine amounted to some \$5,000 per pilot. Hardly the price
12 for which a pilot could forfeit seniority placement.

13 The fact of that fine really didn't mean that much
14 to the APA. As you heard during the trial the fine was
15 resolved during the April or May timeframe of 2001.

16 Next paragraph, he talks about the claim that
17 American, a claim was made in the arbitration that American
18 should not have opposed the Bond Amendment. ALPA directs the
19 Board's attention to the company's vigorous opposition to
20 legislation proposed by Missouri Representative Christopher
21 Bond, who attached an amendment to the appropriations bill
22 that would have guaranteed arbitration of the merger dispute.
23 American weighed in heavily against this amendment which was
24 ultimately dropped from the final bill.

25 He notes at the bottom, all this placed -- he

1 talked about the company's responsibility to the APA
2 contract. All this placed the American pilots in a virtually
3 unassailable bargaining position in the upcoming seniority
4 discussions. For this to have been overturned by legislative
5 fiat, while American remained silent, would have been viewed,
6 properly so, as a remarkable and profound abandonment of the
7 company's responsibility for this existing work force.

8 American had a responsibility to the pilots and an
9 obligation he felt to defend the terms of the collective
10 bargaining agreement, and to oppose the Bond Amendment. So
11 nowhere, that is going nowhere. One other thing I want you
12 to, I think it is important for you to note, a lot of
13 plaintiff's case favor, Duane Woerth scowled. People raised
14 their voices.

15 I want to highlight one other aspect of the October
16 21, 23 minutes that I think is important. If you turn,
17 please, to page, again, I encourage you to review these
18 minutes in full. But if you turn page 7 of the minutes.
19 When you read through the minutes they are minutes of a
20 multiple day meeting, the meeting goes on, it breaks late, it
21 starts and picks up.

22 I want to point out to you that there are a number
23 of occasions where Captain Woerth is on the phone calling in,
24 Howard Atterian, Jeff Brundage, everybody is calling in and
25 catering to the TWA pilots, trying to get them as you heard

1 to move forward and reach an agreement.

2 And what is happening here is this is on Sunday
3 evening, October 21, 2001. After ten o'clock at night,
4 actually after 10:30 at night you have got Captain Woerth and
5 Captain Atterian participating by telephone. So Duane
6 Woerth, who the plaintiffs want to portray as uninvolved and
7 uninterested and unsupportive, Sunday night at 10:30 he is on
8 the phone with the MEC answering questions, giving guidance,
9 trying to help them move forward.

10 I think that speaks volumes about the kind of guy
11 Captain Woerth and the extra mile that he went to try to help
12 the TWA pilots.

13 Now, what about the events that result in
14 Supplement CC. I am going to go through this quickly. I
15 think you heard there is an effort at this meeting on the
16 22nd and 23rd to accept the proposal that is out there from
17 American but they try to make changes. You may recall these
18 letters on the letter that goes out on the 23rd. And then
19 American and the APA write back and say thanks for accepting
20 our proposal, but all of the additional conditions, that we
21 try to attach are unacceptable.

22 And if you read through these minutes, again, I
23 encourage you, you recall that this is a meeting where
24 Rautenberg and Altman are trying to get the MEC to vote to
25 accept a proposal. And that motion is rejected. They then

1 go back the second time and there is a vote where a modified
2 letter is agreed to, where Rautenberg and Lewin voting in
3 favor. Two people abstain. And two people oppose.

4 They send the letter, it is rejected by Brundage.
5 And you read through the minutes, Brundage calls up and he is
6 pretty darn angry about it. Brundage is the one who had
7 written a letter on October 12 which is D 200, another letter
8 you might look at, where he is upset and complains to Duane
9 Woerth because basically he got stood up. They invited the
10 TWA MEC members to Dallas Fort Worth to talk about seniority
11 integration, and instead of sending the merger committee or
12 delegation, they send Bob Pastore and Pastore shows up with a
13 confidentiality agreement and says I will talk to you guys
14 but I have no authority and you have to sign this
15 confidentiality agreement.

16 That nothing happened to that. Brundage wrote this
17 angry letter. Here we are on October 21st and 22nd and 23rd,
18 and on the 23rd, they are sending this letter that they know
19 ahead of time that Brundage is going to reject. He calls up
20 after he gets the letter and says it is rejected. It is not
21 acceptable. That is on page 16 of the minutes.

22 The result of this back and forth is there is no
23 agreement.

24 And what happens next is that Rautenberg, was here
25 to testify, he is upset. The ALPA National people are

1 advising you are going to get a worse deal if you reject the
2 proposal out there, and they impose something. I heard him
3 say something. You heard David Holtzman say that and indeed
4 Supplement CC they told you as ultimately implemented is a
5 worse deal than the deal that was on the table. So
6 Rautenberg is pushing, and he writes a letter on October 25,
7 that I want to spend a couple minutes on because I think it
8 is just a key letter that speaks volumes about what is
9 happening. D 21.

10 Pull that up, please.

11 What is happening in this letter is he is writing
12 back to the pilots in Council 3 trying to explain to them all
13 of what is happened in, and explain why the issue of
14 seniority integration has not been resolved. And one of the
15 things he explains to them is all the politicking back and
16 forth. You go to the second page of the letter, where he
17 talks about -- The third page, this is the back and forth
18 reflected in the minutes. He goes to the fifth page. He
19 picks up and says, Brundage called in, he received our
20 conditions, which were the ones that he had already made
21 clear were totally out of the question.

22 We responded in two ways. One was a call between
23 the master chairman and Brundage in which he again rejected
24 our conditions. The second was a teleconference between
25 those of us in the room, Brundage, Howard Attarian, Duane

1 Woerth's executive assistant, and Bob Christy of ALPA
2 International. The only members of the MEC present in the
3 room during that teleconference were Captain Lewin and myself
4 and the other four members of the MEC, which I will refer to
5 as the DC caucus, had left to hold yet another caucus amongst
6 themselves alone.

7 Who is he referring to? Hollander, Young, Case,
8 and Altman. The fewer pilots that came in and testified.
9 Remember I told you in the opening that they were a faction
10 within the MEC, that they were in the minority, Hollander was
11 in the minority on April 2 and other the summer Singer, they
12 took things over. Their position in October is they don't
13 want to agree to anything.

14 We want APA and American to impose something so we
15 can go file a lawsuit against them. He refers to them as the
16 DC caucus. It is not me identifying them as a faction. It
17 is Rautenberg based on upon what happened. He talks in the
18 next paragraph about Atterian and ALPA made it absolutely
19 clear that Brundage was with them, that only minutes were
20 made to acceptance of the offers that APA and American had
21 made. Brundage made it clear American was done negotiating
22 and what American was willing to do to facilitate agreement
23 between APA and ALPA had been made clear.

24 He talks about the motion that was made to accept
25 the deal on the table. And not to get stuck with Supplement

1 CC, and then he writes at that point the meeting was
2 adjourned. The high fives, and the celebration amongst the
3 DC caucus, the pilots who testified as part of the
4 plaintiffs' case, began and others who were not interested in
5 celebrating, including Captain Lewin, myself, our two legal
6 counselors, the MEC officers, remember the officers, it is
7 Pastore, it Shwartz, we talked about them before. The MEC
8 officer, a couple of members of the merger committee and a
9 few others packed our stuff and departed the room.

10 Celebration over blocking an agreement that as we
11 now know would have benefited the pilots more than Supplement
12 CC.

13 What happens, you recall the rest of the story.
14 There is a meeting on October 31 just before the domiciles on
15 the east and west coast collapse. There is a resolution
16 passed to try to block Rautenberg from pushing ahead.
17 There is a November 1 letters where ALPA National says you
18 can't pass a resolution that requires unanimous approval and
19 the master chairman's approval. That is against the bylaws.

20 So again, when the plaintiffs want to argue to you
21 that ALPA violated its policies and procedures, here is a
22 second example, where they are trying to violate the
23 procedures and get their way. We had the meeting on November
24 7, where Rautenberg makes a last effort to accept the deal
25 what that is on the table.

1 You saw from this summary that Brundage was at
2 wit's end on okay 23. How do you think it came that Brundage
3 and the American people were still talking, that they didn't
4 impose Supplement CC on October 24. How that happened, Duane
5 Woerth picked up the phone and called Brundage who had worked
6 it out and made the communications that only Duane Woerth
7 could make and said, look, we got some pilots here who are a
8 little bit hot-headed. Give us a chance. Give us a chance
9 to regroup and let's get some more time here. And they did
10 that.

11 They did that because of the personal
12 relationships, they did that because of who Duane Woerth was.

13 Another thing, among many things, that Duane Woerth
14 did to try to help the pilots and to save them from the
15 faction who had this other strategy.

16 November 7, as you have heard, Rautenberg tried to
17 get a motion passed except Sally Young wouldn't second it,
18 and again, the policies and procedures that ALPA National was
19 saying are in effect, that you cannot second it, they are
20 disregarded, so we have another situation where policies and
21 procedures are disregarded because of an agenda, because of
22 an agenda to try to block a deal that would have been better
23 for the pilots.

24 So Supplement CC, as you heard, involves ratioing
25 1050 pilots in. The other 1,250 pilots get stapled, they

1 don't get stapled as of the effective date of employment at
2 American. You recall that the American pilots' contract
3 which you saw entitled new employees at American, entitled to
4 have then new employees stapled when they became American
5 employees. They are still employees of TWA LLC, but despite
6 that it is made retroactive. They are going to get stapled
7 as of April 10, 01. They are ahead of 480 American pilots
8 who were hired.

9 You heard about the protected cells in St. Louis.
10 You heard the testimony I referred to before from Holtzman,
11 and from Rautenberg about some of the things that were lost.
12 There was no furlough guarantee for former pilots, senior, to
13 Ray Cano, the most senior staple pilot. There were different
14 limits, less favorable limits on how much the protective cell
15 in St. Louis could shrink, and there were limits that were
16 lost on the number of pilots, TWA pilots, who could be
17 subject to furlough.

18 And the other thing that were lost, you may recall
19 Wilder pointed this out, Wilder pointed out, that look, if
20 you sign on to a three-party agreement, you recall the three-
21 party term sheet that was out there, dated November 6, if you
22 sign on to that American and the APA can't come back and
23 change it because you are a party to that contract. If you
24 don't sign on and they impose Supplement CC, they could come
25 black in two months, if something else happens and say, oh,

1 we are changing it, we are going to make it less favorable to
2 the TWA pilots.

3 And no one knew of course at that time what the
4 future might hold. These are all benefits that the Hollander
5 faction, they snubbed their collective noses at. And who is
6 the worst for it? The TWA pilots. So think about that when
7 you listen to an argument that it was ALPA, that it was
8 Duane Woerth, or ALPA National, that did wrong by the TWA
9 pilots.

10 They went the extra mile to try to get the best
11 possible deal. But again, because of the way these MEC's
12 work, because of this whole Independence Plus procedure, this
13 structure, the pilots decide, the pilots decide by majority,
14 whether right or wrong. ALPA National does not make any
15 decisions for them.

16 I think I have addressed the issues raised by the
17 plaintiffs, as I understand them. I think you understand
18 what happened here in terms of the difficult situation. But
19 a clear decision that had to be made on April 2. I think you
20 understand, and I hope you do, from the evidence, and the
21 documents that the American pilots felt just as strongly
22 about seniority as the TWA pilots did. But they had the
23 legal right, they had a contract, they had the leverage, they
24 had the ability to quote the article that Mr. Singer found
25 back on March 30, they had the ability to impose the

1 law of the jungle, which meant they got the better deal. Did
2 they insist on stapling? No.

3 What happened here was much better than stapling.
4 Was it as good for the TWA pilots as Sean Clarke would have
5 liked? As some of the other pilots would have liked?
6 Absolutely not. It wasn't as good as anybody wanted. But
7 the mature, experienced pilots like Steve Rautenberg who was
8 pushing ahead to try to get a deal understood that you can't
9 always control the destiny, sometimes you have to take the
10 best deal possible under the circumstances.

11 And that one of the things you most certainly have
12 to do is you have to avoid risk. You have to avoid rolling
13 the dice, and taking chances, that can really, really hurt
14 you.

15 And that is why you we submit to you that the
16 decision made on April 2 of 2001 was unquestionably, not a
17 shadow of a doubt, the right decision. Waiving scope was
18 essential. Waiving scope was giving up something that was
19 indefinite and uncertain, and as I think we have outlined for
20 you that ALPA National did everything that was within reason
21 during the rest of the year to try to support the MEC, to
22 give it extra chances, to position it, so that it could get
23 the best possible deal for the TWA pilots.

24 And the sad thing about this case is that that
25 didn't happen. You had this group that felt they could win

1 the seniority, the best efforts arbitration and they could do
2 something. It didn't happen. They were not being realistic.
3 And they lost out, the TWA pilots lost out. And what is
4 unfortunate about this case, as I think you have heard from
5 the evidence, what is unfortunate about this case is that the
6 people pushing this litigation are suffering from amnesia.

7 They are trying to rewrite history, what happened
8 here, to justify what happened. Instead of taking
9 responsibility for decisions they made, instead of saying
10 yeah, I was at the meeting on March 21 or 22, yeah, I read
11 the documents, yeah, I did my job and prepared to make
12 decisions, to come in here and just made a mess of the fact
13 in terms of what happened, pretending they don't recall being
14 there, they don't recall the advice, pretending that they
15 weren't there on April 1, when even Mr. Wilder said they
16 were, and everybody else who has taken the time to prepare
17 and trying to give you the story.

18 This Broadway play, choreographed by Mr. Hollander
19 to the effect they were bullied and coerced on April 2.

20 Now, as I think Judge Irenas explained to you when
21 I began, I go first in terms of my presentation here. The
22 plaintiffs' lawyers get the last word. I don't get a chance
23 to come back and respond. If they say something I don't
24 agree with or I can think of some reason why I think what
25 they said is wrong, that is it. You have heard enough from

1 me is the way the system works.

2 So what I would like you to do as you hear their
3 presentation is to just keep in mind the framework that we
4 talked about at the very beginning. And the framework is,
5 you are supposed to consider what is in evidence, not
6 questioned by the lawyers, where the answers might be no, I
7 don't recall, documents and testimony. And then you are
8 supposed to evaluate that evidence and the arguments in light
9 of the standard.

10 Again, the standard, we don't have to prove that
11 ALPA left no stone unturned, or used what we refer to as
12 heroic efforts to help the MEC. The plaintiffs have to prove
13 something. What they have to prove is that ALPA acted
14 unreasonably, or irrationally, that it acted with ill will or
15 they have to prove that we did things like make deliberately
16 misleading statements. That is a pretty high bar. And we
17 ask you when they make arguments that I haven't anticipated,
18 maybe haven't thought about, we ask you to hold them to that
19 standard, and they, make them prove their case. We ask you
20 to also think about the issue of causation.

21 It is real easy to see ALPA could have done X, Y
22 and Z. But if it wouldn't have mattered given the fact that
23 the APA was an immovable object, it had its agenda and the
24 American pilots wanted to move, unless they can persuade you
25 that it made a difference we submit under the law, as the

1 Judge will describe to you, you should reject that argument.

2 Keep that framework in mind as you consider the
3 arguments and certainly as you consider the evidence.

4 You have been enormously patient. You have sat
5 through weeks and weeks of testimony . You listened to me go
6 on for hours today. I probably repeated things you knew and
7 already understood, and I am sorry if I did that. But the
8 case is enormously important to ALPA. I think you understand
9 that. And I want to thank you for your patience, and your
10 attention.

11 Thank you.

12 Your Honor, thank you.

13 THE COURT: Thank you very much, Mr. Fram.

14 I think we will take a brief break now. And I will
15 decide where we go from here today.

16 I am leaning towards adjourning today. I don't
17 want the plaintiff to be in a position of having his
18 closing --

19 MR. PRESS: I don't mind doing it. Just to
20 consolidate and use the jury's time.

21 THE COURT: If you don't mind. You told me
22 earlier --

23 MR. PRESS: Let's just proceed.

24 THE COURT: Let me ask you this. Do you need a
25 break?

1 You have been listening for three hours of closing
2 arguments. That is intense. We will take a ten-minute break
3 now.

4 Then Mr. Press will start.

5 (Recess)

6 (The jury enters the courtroom.)

7 THE COURT: I now recognize Mr. Press to make his
8 closing argument on behalf of the plaintiffs. Mr. Press, we
9 are breaking around two, so you know when would be a
10 convenient time, convenient breaking point.

11 MR. PRESS: Okay.

12 THE COURT: We will continue the rest of your
13 closing tomorrow morning.

14 MR. PRESS: Okay. You know I am not going to
15 finish in 45 minutes. You know that.

16 Good afternoon, folks. I want to thank you for the
17 hard work that you all put in. If you remember in my opening
18 statement I promised you this would be hard. I prompted you
19 lot of things. That was one promise I know I kept. And we
20 do thank you on behalf of the 2,300 pilots that we represent,
21 we do thank you.

22 And on that point, this class action, Mr. Fram told
23 you just a few minutes ago that this is being pursued by a
24 faction of the TWA pilots. He said in his opening, and he
25 said it again today. I couldn't believe it. This is no

1 faction. Look at this room. And my clients, he called them
2 all liars. I want you to remember, some of them are here.
3 Alan, Sean Clarke. Please stand up. Sally Young. Alan
4 Altman. Matt Comlish.

5 They are all liars. That is what he just told you.
6 You remember these people. They sat there, right in that
7 chair and looked you all in the eyes and told you what they
8 believed.

9 They told you what they remembered. To the best of
10 their ability, stuff that happened ten years ago. Their
11 story was completely consistent, unlike some of the ALPA
12 witnesses that we will get into. That is who they are
13 calling liars to you today.

14 And then this charming fellow, remember him. This
15 was Howard. Howard Hollander. He is a liar, too. He is the
16 fellow that remember, that fateful day, April 2, he followed
17 advisors out of the conference room, they went in and have a
18 conference call and he put his ear on the wall, the room next
19 door and he overheard what they were saying, which wasn't
20 very nice.

21 But that is who they are now trying to portray as
22 just completely dishonest people. And I hope you don't
23 believe it. These people are serious, credible people. They
24 came in here and told you the truth to the best they could,
25 and they are no faction.

1 Who is the faction? I mean, come on. Steve
2 Rautenberg is the faction. He is the one that got run right
3 out of his office because of the things he did there at the
4 end trying to get Supplement CC passed, after the full MEC
5 had just rejected it two weeks earlier. Remember all of
6 that. Steve Rautenberg is the faction. He is entitled to
7 his opinion. And no one could quarrel with somebody wanting
8 to have their own opinion. But don't come in here, Mr. Fram,
9 and recreate facts.

10 Mr. Rautenberg was the faction. And his decision
11 was so unpopular, remember what happened? There was that
12 recall vote in St. Louis, it was the most attended two-day
13 pilot meeting ever in the history of TWA, it was about 600
14 people showed up for this. So no. Again, Mr. Rautenberg is
15 entitled to his opinion, but it wasn't very popular.

16 So that was part of who we brought in. Who else
17 did we bring in here? We brought in Roland Wilder, by video,
18 remember Roland? Will, can you put his picture up there real
19 quick? Roland Wilder.

20 This was not the way I would have wanted to present
21 this testimony to you. You got to believe me on that.
22 Playing a video, I would never want to do that in any case
23 of, especially in this one, not of this man in particular.

24 He lives in Washington, D.C.. It is outside the
25 subpoena power of the Court. I can't put a subpoena on him

1 and get him here. Couldn't do it. This was the only way I
2 could present his testimony to you.

3 And I know they are throwing Roland right under the
4 bus here all morning and afternoon. But do you believe that?
5 This is an experienced, serious, highly qualified man. He is
6 a guru in this industry. He testified that he is one of a
7 handful of lawyers in the country that practice in this area
8 of the law, and that is seniority disputes.

9 He is the expert. And we are supposed to believe
10 Clay Warner over Roland Wilder as to what is a good legal
11 strategy. Come on. Come on.

12 So we brought you Roland Wilder. And here is what
13 is important. There is a lot of things important. But
14 Roland testified, he testified that good things happen to
15 employees that fight. Good things happen to employees that
16 fight in a labor struggle. And he said, if you are going to
17 get in a fight it is better to fight than to lie down. That
18 was, that is his advice to every group that he represents.

19 And that is sound advice. But what happened here?
20 What did ALPA do?

21 They insisted that the TWA pilots surrender their
22 best leverage, the scope. That is the first thing they did.
23 You got to surrender that. And then we go into the
24 negotiations and everything that the TWA pilots asked to do,
25 to garner some leverage, what did ALPA say. No. No. No.

1 No. No. No. That is all they ever said to the TWA pilots.
2 And they never had an idea of their own, no, that is not a
3 good idea, but let's try this. No, they didn't do anything
4 to supply the TWA pilots with any leverage after they
5 stripped them or advised them to surrender their best
6 leverage. That is what happened here.

7 And we brought you the people that wanted to fight.
8 Who did they bring in? They brought you four lawyers, not
9 that there is anything wrong with that. They brought you
10 four lawyers, none of whom told you anything that they did to
11 help in the seniority debate. None of them. Not one of
12 them. And they brought you two disgruntled former TWA
13 pilots, Rautenberg and Singer, and they brought you a
14 completely discredited former president, Duane Woerth. And
15 why do I say that he is discredited?

16 Mr. Fram called my clients liars. I am not going
17 to do that to Ambassador Woerth, but what he said on the
18 witness stand wasn't entirely truthful about some of the
19 important things. You remember the testimony, my partner,
20 Joe, was cross examining him about the scab list. Remember
21 the testimony, there was this business about the TWA pilots
22 wanted to have a jumpseat war against the American pilots.
23 And there was, there was some evidence, Duane Woerth was
24 asked the question, isn't it true that ALPA has a list of
25 scabs, and that scab list is distributed to members? And the

1 idea is that ALPA members are not to allow scabs to use the
2 jumpseat. Do you remember that? And I should give you some
3 more framework before I go on.

4 ALPA has told you that we don't do jumpseat wars
5 because we don't use the jumpseat to punish another pilot.
6 We don't use it for political reasons. Well, that is
7 hogwash. They do it. With this scab list.

8 Duane Woerth denied it. Oh, we have never had a
9 scab list. Remember how, he was very calm in his testimony.
10 But when it came to that scab list he perked right up. And
11 he said very defiantly, no, we have never had a scab list.
12 Remember what he said next? That would be illegal. Okay.
13 Joe sat down.

14 Then what happened a week later? Seth Rosen is on
15 the witness stand, and he tells you the truth. They did have
16 a scab list. It took them a while to get there to remember
17 that. Remember I had to show him a copy of a court opinion
18 that he actually participated in and once he read that, he
19 said, he had to admit then, yes, Mr. Press, we did have a
20 scab list and we did distribute it to all of our members.

21 So Duane Woerth was not exactly truthful with you.
22 And as Mr. Fram told you, I mean, come on, that is black and
23 white.

24 Did you have a scab list, Captain Woerth?

25 No, that would be illegal.

1 We know it is not true. They did have one. But he
2 just didn't want to tell you that. And what did Mr. Fram say
3 about somebody that doesn't tell you the truth in the witness
4 stand? You can believe what you want to believe and what you
5 don't want to believe. And I suggest that everything he said
6 should be clouded, you should judge very seriously whether or
7 not you believe that from this man. All right.

8 So that is what they brought you. We brought you
9 all the people who wanted to fight and they brought you a
10 bunch of people that told you nothing about any fight that
11 they put up. All they brought to you was excuses.

12 And I am sitting here listening to Mr. Fram, and
13 excuses, everyone has got an excuse, excuses are like noses,
14 my mother told me. Everybody has got one. That is not what
15 the TWA pilots wanted. They wanted a fight. They wanted
16 real support. They needed leverage against the American
17 pilots. Yes.

18 What Mr. Fram said is true, the American pilots did
19 have the leverage. But they didn't have the most powerful
20 pilot union in the world backing them up.

21 And that is what our clients expected. They
22 expected real support.

23 Now, let's get to the instructions you are going to
24 get. The Judge is going to instruct you that ALPA violated
25 its duty of fair representation to the TWA pilots if it did

1 one of two things. If it acted arbitrarily, or it acted in
2 bad faith.

3 Now, let's begin with arbitrary, okay. You will be
4 instructed that examples of arbitrary conduct include acting
5 in a perfunctory or superficial manner. Perfunctory or
6 superficial manner. If a union does that, a union has acted
7 arbitrarily and has violated its duty to its members.

8 So did ALPA act perfunctorily, superficially? You
9 bet. I mean, my goodness, they did nothing but give lip
10 service.

11 I am going to break things down into things that
12 made sense in my mind any way. Let's talk about the broken
13 promises first. I think it is completely legitimate and fair
14 to conclude that a union act arbitrarily when it doesn't do
15 what it promises to do.

16 It seems fair. If you promise one thing and you
17 don't deliver, you do just the opposite, then that is
18 arbitrary conduct. And so let's look at what ALPA promised
19 my clients, while all of this was going on. They are real
20 words. D 243.

21 Now I need to be able to see it.

22 D 243. What did they promise here? Can you go to
23 the highlighted section?

24 What is the date on this? I need to go over here
25 so I can see. This is an MEC meeting from January, 2001,

1 right. And Captain Shwartz, where is he at? He is the vice
2 chairman there, the second line. He reports on some
3 conversation he had with Duane Woerth. What does he report?
4 If you go to the next clip. Shwartz briefed the MEC on his
5 conversation with ALPA president Duane Woerth. He said
6 President Woerth indicated he would be extremely supportive
7 of the MEC's efforts in the coming months.

8 So that was promise one. Woerth is going to be
9 extremely supportive.

10 What is promise two? March 2, D 245. This is
11 again an MEC meeting, March 2, in St. Louis. And there is
12 another report on what Duane Woerth says he is going to do,
13 if we can go to that. Vice chairman Scott Shwartz stated
14 that Captain Woerth was committed in assisting this pilot
15 group to facilitate fair seniority integration. Good. That
16 is what we want. Assured the body that all resources would
17 be utilized to obtain fair seniority integration.

18 All resources would be used.

19 That is what was promised that date.

20 What is the next one? March 21, D 223. Another
21 MEC meeting. March 21. What is the promise and commitment
22 delivered that day? Again from Scott Shwartz. He again
23 briefed the MEC regarding teleconference with Duane Woerth
24 who promised to ramp up ALPA support and utilize other legal
25 venues for support. Other legal venues. That would be

1 what? A lawsuit.

2 And by the way, the timing of that, March 21, the
3 first time TWA pilots asked to bring a lawsuit was five days
4 later when Roland Wilder that letter to Duane Woerth
5 suggesting he should try to hold up this deal to buy times
6 for my guys. That was written five days after Woerth
7 promised other legal venues of support. And of course, we
8 know what happened to that litigation strategy. It was
9 rejected. Woerth didn't even bother to respond to Roland
10 Wilder on that one.

11 Okay. So the next promise, this one we don't have
12 a document of, but we have Mike Day's testimony. Remember
13 Captain Day, the distinguished man who was head of the merger
14 committee, in charge of negotiating the seniority? Do you
15 remember him? And Mike Day told you that after he got done
16 with his first round of, if you want to call them
17 negotiations, at the end of March with the American
18 negotiators, he was very distraught, and he said he had a
19 conversation with Randy Babbitt, and Babbitt told him, said,
20 Mike, don't worry about it. Duane Woerth has told me that as
21 soon as we get all the bankruptcy issues put aside, the
22 gloves are coming off. That was promised at the end of
23 March. As soon as we get the bankruptcy issues resolved, the
24 gloves are coming off. Okay. That sounds good.

25 So that was the promise that day.

1 Then let's go to the next one, which is April 23, D
2 78. This is April 23, another MEC meeting in St. Louis.
3 This is the one where Duane Woerth attended, and what did he
4 report to the MEC? What did he report? First we have Ted
5 Case over here. He is making a statement for the record, and
6 he wants Captain Woerth on the record this time. He says,
7 Captain Woerth, if the TWA pilots -- Oh, he asked Captain
8 Woerth if the TWA pilots had his commitment as the president
9 of ALPA to use the full resources of the association,
10 including litigation, if possible or necessary, against the
11 APA, American, and TWA.

12 What does Captain Woerth, how does he respond?
13 Captain Woerth responded what? If there was any basis for
14 litigation, it will be pursued.

15 That no stone will be unturned to protect the TWA
16 pilots.

17 Now, maybe there is no legal duty to turn over any
18 stone on behalf of the guys you represent, but if you
19 promise it to them, shouldn't you deliver it? Of course you
20 should.

21 So that was April 23. What is the next one? It is
22 May 31, P 316. P 316. This is the May 31 letter that Duane
23 Woerth sent to every TWA pilot. All 2,300 of them got this
24 letter. And what does he say here? How does he conclude?

25 As president, I will continue to coordinate with

1 your MEC and your merger committee to ensure TWA pilots are
2 fairly and equitably integrated into the American pilots
3 seniority list.

4 Okay. And we had every MEC member testify and
5 every merger committee member testify, up to that point, sir,
6 and Ms. Young, was there any coordination between MEC and
7 Duane Woerth? And the answer was no. Was there any
8 coordination thereafter? No. And the same question was
9 asked of Sean Clarke and Mike Day and they both testified no.

10 So, but this is what the ALPA president is
11 promising. This is what they were promising. And that is
12 what my clients expected. That is what they expected. The
13 full resources of their union applied against the American
14 pilots. So that they could in fact get the best seniority
15 integration possible. That is what they expected. That is
16 clearly not what they got. What they got was a whole gaggle
17 of advisors that show up on April 2 to persuade them to
18 waive scope. We know that happened. Then they all
19 disappear, all these advisors, meeting after meeting in
20 March, and early April. And then poof, they are gone. Never
21 to come back.

22 It is all the pilots ever got from ALPA was lip
23 service and the word no. That is all they ever got. They
24 even said no to writing a letter, remember, this one? It is
25 D, no, P-161. P-161. This is, I mean this is really

1 amazing.

2 This is Randy Babbitt, he was the last witness to
3 testify by that video deposition that they played. And he
4 wants to write a letter to the secretary, or the -- yeah, the
5 head of the Department of Transportation, Norm Mineta and he
6 wants to write this letter saying Secretary Mineta, you
7 should hold up this American deal until the seniority issues
8 are played out and worked out and there is going to be some
9 assurance of fairness. That is what the attached letter
10 says.

11 And what happened? He sends this up to Clay Warner
12 on March 28. Warner testified that he spoke with Paul
13 Hallisay, this ALPA lobbyist about it. And Paul said, Duane
14 says no. Okay. You can't even send a letter.

15 Go to the next page, or the last page, there is
16 another no in here. Remember Clay Warner wouldn't even agree
17 when the Judge was trying to get him to agree that that is
18 his handwriting? The suggested proposed letter says that I
19 would suggest that the final DOT approval should include
20 language requiring American to take appropriate steps to meet
21 the minimum fairness standards on seniority integration.
22 Okay. And Warner -- that is proposing DOT assure fairness in
23 the transaction. And Warner writes, no.

24 You are going to be instructed on this
25 arbitrariness element, that a union acts arbitrarily if it

1 acts irrationally.

2 Irrational behavior from a union is arbitrary
3 conduct.

4 Now, like broken promises, shouldn't we conclude
5 that it is irrational for a union to persistently violate its
6 own practices and policies? If a union persistently does
7 that in representing its members, wouldn't you consider that
8 to be irrational? Well, there was plenty of that here.
9 Plenty of it. We saw that ALPA has many, many tools
10 available to itself to help its members.

11 Many tools. And I am going to list them one by
12 one. And the fact is, and why we are here is that none of
13 those tools were given to the TWA pilots. The first one I
14 want to talk about is contract negotiation assistance.

15 These TWA pilots as part of the scope surrender,
16 they get this new collective bargaining agreement, right?
17 Mr. Fram wants you to believe this is some great thing. I
18 will get into that. But let's just talk about how it was
19 negotiating and compare that to ALPA policy.

20 ALPA first of all has a written policy on how to
21 negotiate a contract with your employer. And that was
22 exhibit 249. P-249. Or J, I am being told there is the
23 first page of it. We had Mr. Rosen talk about some of this
24 stuff. And on the first highlighted clip, what is the policy
25 there? D. Ratification. That means you have to have all

1 the members vote on it. Ratification. The conclusion of an
2 agreement shall, at the discretion of the MEC, be subject to
3 MEC or membership ratification.

4 So if the MEC wants, it can put out a contract for
5 membership ratification.

6 What happened here? On April 2 when the advisors
7 are all there telling them the train is leaving the station,
8 they may say that comment wasn't made, but you know it was,
9 they all say it. But when that conversation was taking place
10 the MEC said they were reluctant to do this. They didn't
11 want to. They said can't we put this out for vote? Can't we
12 have membership ratification? And what was the response?
13 No. There is not enough time. There is not enough time to
14 do that.

15 Well, what was driving that issue? The bankruptcy
16 hearing which was set to be heard four days later. Okay.
17 The meeting was on Monday and then the bankruptcy hearing was
18 on a Friday, and they are saying, well, there is not enough
19 time to put it up for ratification. But there was. Mr.
20 Seltzer supplied the proof. He told you that there is an
21 automatic right to an extension of the 1113 hearing. All
22 they had to do is go into court and say Judge, we would like
23 an extension of this hearing so that we can put this issue
24 out to vote to the members, the union local representatives
25 have asked for it, and that is what we want to do.

1 And that would have been done. Then ALPA has
2 procedures for telephonic balloting. In can be done very
3 quickly. So when they told the MEC there is not enough time,
4 that wasn't true. There was time. They just wanted a
5 decision that day. And I will explain to you why that was
6 important to them. But not now.

7 The next highlighted page, again, how to negotiate
8 a contract policy. This one is "Crisis and concessionary
9 Negotiations."

10 The TWA pilots were clearly involved in a
11 concessionary negotiation. They were being asked to give up
12 their scope. Nothing could be more important to them.

13 So this policy applies. And what does it say on
14 the next page? If you are involved in that kind of
15 negotiation, ALPA shall provide to the MEC, can you highlight
16 that? Shall provide three things. First one is probably the
17 most important one: Coordination directly through the
18 president's office. So under ALPA's written policy, if an
19 MEC is involved in a concessionary negotiation, that
20 negotiation has to be coordinated through the president's
21 office.

22 That didn't happen here. Woerth didn't tell you
23 one thing that he did coordinating any of this negotiation of
24 this new contract. He wasn't involved. They violated the
25 policy.

1 Now, there are remarks in the record that Captain
2 Woerth made when he is speaking to the American pilots. A
3 copy of his speech is in evidence, it is exhibit 10, P 10.
4 And in his speech he makes some remarks about, additional
5 remarks on what ALPA does when negotiating a contract, and if
6 you go to page 26 of this document, it is number 26, now,
7 this is what is going on here.

8 You got this fellow, Captain Dan Hall, that is an
9 American pilot, he is asking a question. And his question to
10 Captain Woerth is about how they structure negotiations.
11 Then Captain Woerth responds. Here is his response.

12 "We have employees, we have three directors, a
13 director and three assistant directors that are in
14 Washington. We farm them out kind of on what I call the
15 crisis patrol. Like Seth" -- presumably referring to Seth
16 Rosen. "Seth is the director of that entire department. But
17 since the Delta contract is so important now on top of
18 Northwest, we have three negotiators down at Delta, plus Seth
19 Rosen on the team."

20 Our number one guy is assigned to the number one
21 project. And that is how we use our top four or five most
22 senior guys. The bigger the stakes, the more experienced
23 person we have, the more seasoned veteran on the team. That
24 is what ALPA represents to the world what it does when its
25 members are involved in an important negotiation.

1 Weren't my clients involved in an important
2 negotiation? David. David Holtzman, the same lawyer Dave
3 Singer said wasn't so good, wasn't very thorough. That is
4 all the TWA pilots got. We didn't get Seth Rosen. We didn't
5 get these directors, or any assistance.

6 So they violate their written policy, and they
7 violate their, what they tell the representations to the
8 world on what they do. And that is just on contract
9 negotiation.

10 Then, let's talk about seniority, seniority
11 negotiations.

12 What is the policy there? Again, this one is in
13 writing. It is P 20. P 20. This is ALPA's merger and
14 fragmentation policy. This is the how-to manual on when you
15 are trying to negotiate two seniority lists together, this is
16 the manual on how to do it and achieve a fair result.

17 Most of it deals with the context of two carriers,
18 two pilot groups both represented by ALPA, and that is the
19 typical situation of what we had here is atypical, because
20 ALPA didn't represent the other side. What I said is because
21 ALPA represents so many pilots that usually it is two ALPA
22 represented groups going at one another and in those cases
23 ALPA just backs off. They say go hire your own lawyer. Go
24 raise as much money as you want and have it out. And ALPA,
25 you know, steps aside.

1 That wasn't our case. ALPA didn't represent the
2 other side. This is a case that they get to take the gloves
3 off, as it were. And about but what is the policy, what does
4 it say on page 15? NonALPA or unorganized airlines. Right
5 there. When the circumstances surrounding a merger preclude
6 adherence to this policy, i.e., where a nonALPA or
7 unorganized group is involved, reasonable steps shall be
8 taken by the president to seek acceptance of a procedure that
9 will enable the parties to proceed to a fair and equitable
10 resolution.

11 The president is required to take reasonable steps
12 to seek acceptance of a procedure that will enable a fair
13 result.

14 Duane Woerth worth didn't tell you any step he took
15 to comply with this policy, and that is because he didn't
16 take any. This is another example of ALPA violating its own
17 policy.

18 Duane Woerth was supposed to get involved here. He
19 was supposed to direct these concessionary negotiations and
20 he was supposed to beat on the American pilots to agree to a
21 procedure for a fair integration. And he did neither one of
22 those.

23 Now, what is another tool that ALPA has. Funding.

24 Staying with exhibit 20, if you go back four pages
25 to page this is a whole thing on funding an MEC faced with

1 merging with a nonALPA carrier.

2 See, beginning on the sentence. Statement of
3 intent. This is ALPA's intent. Written policy. It is of
4 particular concern that there is the potential that one of
5 our smaller or less financially able MECs could face a merger
6 with a nonALPA carrier without sufficient means to provide
7 adequate representation for their membership. As provided by
8 ALPA policy, nothing in this policy restricts the MEC
9 chairman of such a group from petitioning the president for
10 supplemental funding to allow proper representation.

11 ALPA policy anticipates that in the situation my
12 clients were faced with, that they get a request for more
13 money. That is the statement of intent. And every time my
14 guys asked ALPA for money. What was the answer? No.

15 In fact, if you remember there was a meeting in
16 July of '01 at the executive council, this is ALPA's board --
17 or not the board, but another layer below the board, the
18 executive council. And the TWA pilot had a group there Bob
19 Pastore, Mike Day and Bud Bensele and they presented to the
20 executive council and they asked for permission to hire a
21 lawyer. They weren't even asking for money. All they wanted
22 was money to hire an independent lawyer because Roland wasn't
23 working for ALPA. Every time Roland asked for something they
24 said no, so they said let's hire a new lawyer. What was the
25 response? Remember, we had Tom Rachsford, he was a member of

1 the executive council, he set on the council, this is ALPA
2 talking to you now, not a TWA pilot. And Tom Rachsford,
3 what did he say the response of Duane Woerth was? Not only
4 no. "Hell no."

5 Can we show that? Remember Captain Rachsford.
6 That was taken in Phoenix, and I asked him, can you recall
7 what the response was to the TWA pilots' request? And he
8 give a long answer. Can we highlight that?

9 It says. I can remember that on -- that Duane
10 listened -- Duane was rather -- I can't read that. -- here
11 it is, line 20.

12 And I remember it specifically, it was no and hell
13 no. We have got resources within the association and we have
14 got a myriad, those are my words, we have a myriad of
15 attorneys. Okay.

16 And Captain Rachsford told me that that that was a
17 strange response from Duane Woerth because he is typically a
18 calm man and he reacted violently that day -- not violently,
19 but angrily -- and it led Tom Rachsford to think that there
20 is something else going on here. That was his testimony.
21 There is something else going on here. And of course there
22 was.

23 On that day, that very day, that was when Clark and
24 Hunnibell got invited to ALPA's headquarters. Got taken out
25 to dinner, a tour of the facilities, all that, so there was

1 something going on that day.

2 Now, on this funding issue, you have also got this
3 thing called a major contingency fund, which we heard some
4 testimony about. This was ALPA's war chest that it doles out
5 to pilot groups that need supplemental funding and they had
6 75 million dollars in it at this time. But of course the TWA
7 pilots restricted completely from any major contingency
8 funding. Any time they asked for it, answer, no.

9 But let's compare that to other pilot groups. And
10 my partner, Joe Jacobson, he was questioning Duane Woerth
11 about this, he showed one press release after another where
12 pilot groups are getting big sums of money, the Delta pilots,
13 ten million I think it was, everybody seemingly who asked for
14 money out of the major contingency fund gets it except the
15 TWA pilots. And even while this was going on, there was a
16 small, tiny group of pilots, from Ryan Airlines, and they are
17 involved with some sort of seniority issue, and they asked
18 for a million dollars and they got a million dollars. This
19 was in May of 2001. Same time, Duane Woerth is promising all
20 the support for the TWA pilots. Ryan Airlines pilots get a
21 million.

22 This is a good time to break.

23 THE COURT: Okay. Ladies and gentlemen, first of
24 all, of course, job one, have a safe trip home and a safe
25 trip in tomorrow.

1 Let me give you a brief rundown for tomorrow. I
2 don't think we will have the administrative stuff we had to
3 do today that caused the hour delay this morning. Tomorrow,
4 I don't think that will be necessary. So I certainly hope we
5 can start at 8:30 tomorrow rather than 9:30 like we did
6 today.

7 We were working for that hour, but there are things
8 we have to get ready for the closing. Remember we thought we
9 were going to have a witness and it turned out we didn't. So
10 we had to use that time for some other things.

11 My anticipation is that Mr. Press will be finished,
12 I can't predict, but ten or eleven o'clock in the morning.
13 My charge to you will be less than an hour. Probably more
14 like 45 minutes.

15 Then we will buy you lunch when you are
16 deliberating, we actually buy lunch for you. We come and
17 take your order. Filet mignon, lobster, good things like
18 that.

19 Then the case is yours to deliberate. Tomorrow I
20 will leave it to you. If you want to stay past 2:30, up
21 until five, to continue your deliberations, that is fine with
22 me. But I won't force you to did that. It is up to you. We
23 will, you will vote and discuss it among yourselves and you
24 will let us know if you want to stay past two or not. That
25 will be up to you. That will be true on any day you

1 deliberate, if you want to stay past two, we will make
2 arrangements so you can do that. But again, it will be up to
3 you. We won't force it on you. To keep our promise, we go
4 eight to two.

5 But sometimes, a lot of times juries like to
6 deliberate as long as they can.

7 It will be up to you. We will see.

8 So you won't hear this very much longer. Don't
9 discuss the case among yourselves. Don't discuss the case
10 with friends or loved ones. Keep an open mind until Mr.
11 Press as finished his closing argument, and you have heard my
12 instruction as to the law which will all be tomorrow morning.
13 And then have a safe trip home. Have a safe trip in
14 tomorrow.

15 (Jury leaves the courtroom).

16 THE COURT: Counsel, if you want to pick up a final
17 copy of the charge that reflect the changes we discussed this
18 morning, send somebody to my chambers.

19 MR. PRESS: I have got enough information on that.

20 THE COURT: Yes. There isn't much. But those
21 changes have been, I am advised, completed. If you want
22 them, if you don't want, them I will just bring them here
23 with me in the morning.

24 MR. PRESS: That is fine.

25 THE COURT: I will bring them down tomorrow. Other

1 than that, I will see you tomorrow.

2 Mr. Press, you will be ready to go at 8:30.

3 MR. PRESS: I will be.

4 THE COURT: Thank you, all of you, very, very much.

5 MS. RODRIGUEZ: Thank you, your Honor.

6 MR. FRAM: Thank you, your Honor.

7 (Adjourned at 2:00 p.m.)

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